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ABSTRACT

Compiled in this document are nine articles addressed to trustees on collective bargaining in two-year colleges. Titles include: (1) Alternatives to Collective Bargaining; (2) Are There Alternatives to Collective Bargaining?; (3) Trustee Involvement in Preparation for Community College Collective Bargaining With Faculty--A Case Study; (4) The Challenge of Alternatives to Collective Bargaining; (5) Compulsory Public-Sector Bargaining: The Dissolution of Social Order; (6) Collective Bargaining in Two-Year Institutions: Yesterday, Today, and Tomorrow; (7) Collective Bargaining and Community Colleges; (8) Compulsory Unionism: A Real and Present Danger; and (9) Establishing the Representation Unit for Negotiations. Contributors include: George R. Fellows, D. B. Leonardelli, Richard A. Gardiner, Fred L. Matthews, Sylvester Petro, Robert H. Diday, John H. Metzler, Susan E. Staub, and Lee T. Patterson and Susan M. Crockett. (JDS)

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ALTERNATIVE TO COLLECTIVE BARGAINING

by
George R. Fellows
Trustee, DeKalb Community College
Clarkston, Georgia

There are alternatives to collective bargaining and I will address my remarks to these.

We have heard over and over again the expression "collective bargaining is inevitable"--and wherever you go to an educational conference, collective bargaining will be on the agenda and the program will point out that the only alternative is to develop expertise in negotiating.

I have never accepted this because I am convinced, first, that nothing is inevitable, second, that preventative action can be taken to eliminate the need for employees to have to bargain collectively.

Educators deal with knowledge and seek the truth and wisdom through reason. The obligation of educators to our communities is to show the way. To conclude that collective bargaining is the only way is narrow and unimaginative. It is frequently just the easy way. People in education can work together with mutual respect and understanding. Differences can be worked out without the limitations of a formal contract.

The key to avoiding the development of an adversary relationship is to function as an educational team. The need for team leadership from the chief administrator is as essential here as in any other approach. But, leadership must be open, honest and shared if it is to be reviewed as authentic.

The leader must really believe in the importance and uniqueness brought by each member to the team relationship. Only under this climate can the educational team approach and florish as the most viable alternative to collective bargaining.

While there are other alternatives, my remarks will be directed to this all important team approach.

Today's faculty is searching for more power than they have had before. While they have been participating or influencing policy matters throughout the development of the American educational system, either as individuals or as members of professional organizations, they desire to become involved and participate in the solutions of community college and technical institute policy problems. They want to be a member of the team.

They have a feeling of frustration because they have not been recognized as an important occupational group within their community and have not been awarded the appropriate salary and fringe benefits.

There is a growing tension between the faculty and the board which, apparently, is based on the inability of many administrators to involve the faculty sufficiently in the development of important decisions.

Faculty must be given more opportunities to take part in the significant decisions relating to the basic interest of the educational enterprise as, by being a member of this allocation-decision making team, they will be able to affect more directly the learning lives of students.

By being part of the team, faculty will learn what resources are available for funds to run the institution. They will become more familiar with the amounts that are available for salaries, fringe benefits, instructional material and equipment and capital improvements.

Faculty should be involved in decisions relating to human resources such as the size of classes, what is the proper instructor-student ratio, what types of professionals are to be involved in the learning process.

Their input is needed in making organizational decisions such as self contained classrooms, proper laboratories, where equipment should be located and there are others.

Also, they should be counselled about the allocation of time. Shall the college year be divided into quarters, trimesters or semesters? How much class time is needed for a particular subject--if laboratories are needed, what time is required? How many class periods per day should be assigned to an instructor? What about the instructor's time away from the campus and his involvement in extra-curricular activities pertaining to the college?

These areas of policy action have been within the authority of administration and board members and there may be a feeling by some that the sharing of these decisions with faculty may be viewed as a threat to the professional perogatives of administrators and/or by board members. These two bodies may resist the invasion of any external group in their policy making domain.

So, the extension to faculty of genuine participating opportunities where they have not been involved before, while it will require an adjustment in the attitudes of administrators and board members, is one of the most important alternatives to collective bargaining.

This change will represent somewhat of a shift away from public authority over education to that of a professionally involved counsel. However, by this team approach, boards need not give away their power for the sake of appeasement. With faculty, administrators and the board all working together cooperatively and with the best interest of the students in their hearts, strength will emerge and if bargaining does become a necessity, it will be negotiated through strength and not from weakness.

To negotiate one must give to get--but one will never negotiate by giving up his strength.

The educational team approach is infinitely more difficult to use than the certainty of the specific contract but it is well worth the effort because it is the only approach that leaves all parties with the feeling that they are proud to be a part of it.

ARE THERE ALTERNATIVES TO COLLECTIVE BARGAINING?

by
D.B. Leonardelli
Director, In-Service Education
Western Michigan University
Kalamazoo, Michigan

For those of you whose states do not have a collective bargaining law--you might look for or develop a model that is not patterned after the labor legislation, which, by its very nature, encourages an adversary relation between the faculty, the trustees and administration. The adversary relation is not conducive to building trust which is essential in a vital learning community.

For those colleges just beginning to work under a labor model of legislation--look for alternatives of working within the law that applies to your state. Don't try to transplant successful techniques from one state to another unless the laws in the two states governing collective bargaining are similar or you adopt the technique to fit the laws of your state.

For those of you who have experience in collective bargaining remember that the parent unions which represent your faculty union are fighting for membership and the battleground to prove their ability as "representatives of faculty" is in each of the states where they have a contract.

Each of the representative bargaining groups (NEA, AFT-CIO, AAUP) is committed to educating the local staff negotiating teams on the latest strategies that have proven effective both state wide and nationally for bargaining groups. They not only inform their constituency of what these strategies are but teach them how to use them.

We, as trustees, can best compete with the faculty unions by learning from the history of successful labor union negotiations. This means developing a professional negotiation team to represent your management group. It should include a person well versed in labor law but also familiar with the uniqueness of the academic climate of collegiality--that is the use of faculty as resource to the solution of college problems but not as final decision makers. Decision making is the responsibility of the administration and trustees.

Other points to consider are:

1. include a board's rights provision in your contract
2. be willing to compromise as you negotiate
3. have a strike plan

and if you are in the forefront you might consider the presence of student representatives at all negotiating sessions. They are the group that stands to lose most in any impasse in the negotiating process.

Maybe our next best alternative will be negotiating sessions open to the public with the mass media present. It might make all *parties concerned* aware that it is the public that must pay the costs for education and who need to know how the bargaining is being conducted.

Perhaps some day--negotiations may be forced from behind closed doors and be open to the public. An open door policy might transform the climate as well as the end results.

The greatest threat, both real and imaginary, of most of the trustees and administrators present was that they would lose control of their power.

People in administrative positions and trustees must learn how to share their power. One effective way in a democracy is to involve the people affected by any decision to be involved in the decision making process. This was one of the principles proposed by our founding fathers.

What better challenge than for those of us in power at community colleges to learn how to apply this process in our decisions in the bicentennial year--1976.

It could be as revolutionary as the U.S. Constitution has been.

TRUSTEE INVOLVEMENT IN PREPARATION FOR COMMUNITY COLLEGE

COLLECTIVE BARGAINING WITH FACULTY--A CASE STUDY

by
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Background. In January of 1969, Community College of Philadelphia (CCP) entered into collective bargaining with Local #2026 of the AFT, the bargaining to culminate a year later with the ratification of the institution's first master contract with its faculty. Opened initially in September of 1965, CCP experienced phenomenal growth until by 1969 the student body numbered in excess of 6,000 with a faculty and instructional staff of approximately 200. The Board of Trustees, the full complement of which numbered 20, was by law appointed by the Mayor of Philadelphia. It was not, however, complete during the first eleven months of the negotiations.

It would appear that the principal causes of unionization at the College lay in 1) a shift in conceptual emphasis from a liberal arts to a comprehensive community college orientation; and 2) relatedly, a corresponding shift in administrative style.

At its inception, the College seemed to have been perceived by administrators and faculty alike as a liberal arts-oriented institution. Apparently, preparation for and the actual process of a 1967 Middle States Association accreditation effort directed administration and Trustee attention to the liberal arts bias of the College. This realization resulted in a commitment of the College to a much more thorough implementation of the comprehensive Community College concept. This commitment was viewed by the Trustees and the administration as an entirely legitimate and evolving phase of College development. This basic decision having been made, the Board of Trustees and administration moved toward its implementation over the years between 1967 and 1969, exerting an increasingly strong leadership thrust toward that end. The role of the administration and the Board of Trustees at the same time gradually changed from what had apparently been primarily one of collegial support of the faculty at the beginning of the College, to one of firm leadership based on commitment to an educational principle. As firm administrative leadership manifested itself, the faculty grew increasingly resentful. Where there had been autonomy and decision-making freedom at the departmental level, the faculty perceived an ever-increasing thrust toward centralized decision-making. They regarded this thrust as an invasion of their professional and professorial rights and responsibilities--rights and responsibilities to which they had earlier been comfortably accustomed.

Accordingly, as administrative leadership became firmer, so too did faculty resistance. The positions became polarized in 1969, and required but two specific instances--the department head issue and the October 15 Moratorium--to catalyze the formation of the Union.

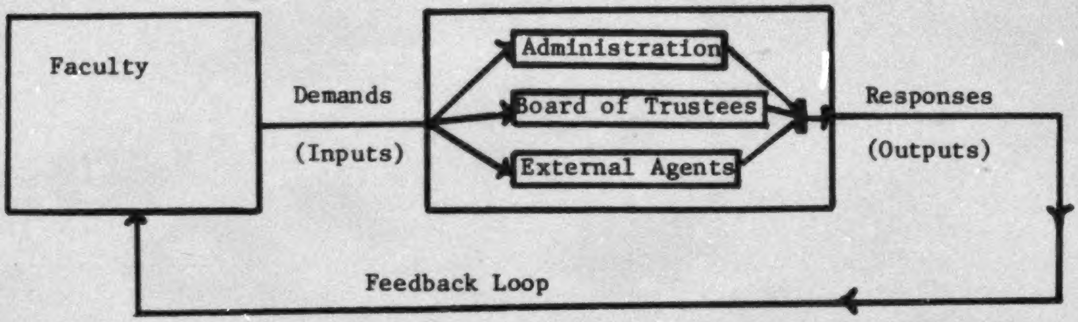
Serving at the time as the Assistant to the President for Personnel Relations, the author was the President's representative at the table for the final seven months of the negotiations. The Board's chief negotiator was a professor at a local university school of business and a widely-experienced public school negotiator. He was assisted by a prominent Philadelphia labor relations attorney both skilled and experienced in private sector negotiations. The Board team membership was completed by the CCP Business Manager, and a number of temporary members drawn from top echelon administration at the College.

Involvement of Trustees. The nature of the involvement of Trustees in the UP bargaining experience can be summarized as follows. At some point, an assumption was made, or if not made, allowed to evolve operationally, that the bargaining would be handled largely by the administration utilizing hired professional negotiators with Board involvement at a minimal level until crisis should occur or the final contract was ready for approval. Accordingly, whatever preparation and planning activities occurred involved administrators and professional negotiators only with the Board to be kept informed.

Minutes of the proceedings demonstrated this approach showing heavy Board involvement at the time of the threat of the first strike in March 1970, and in ensuing deliberations surrounding each of the three actual strikes in September, October and December of that same year, both at the onset of the strikes and their resolution. By contrast, the first two drafts of the Board position presented to the Federation at the table by the Board team were the products of the professional negotiators in consultation with the administration, and had never been approved by the Board in either substance or concept.

Following the conclusion of the experience it seemed important to the writer to inquire as to the effect of this pattern of Board involvement upon the internal decision-making process of the Board, its administration and its professional negotiators (external agents) during the bargaining experience, the more so because in many instances this decision-making process was characterized in the CCP situation by high degree of stress, tension and disharmony, which conditions were alleged by CCP administrators during the experience to have exercized a negative effect upon the substance of the decisions reached, and ultimately upon the context of the contract itself.

The Study. To determine the effect of this pattern of Board involvement on internal decision-making, the writer conducted an analysis of the experience utilizing the case study approach and a modified social systems analysis. To facilitate the analysis, the Board, administration and external agents (professional negotiators and legal counsel) were conceptualized as exclusive and discreet components of a system which received inputs from the faculty federation in the form of demands, acted upon and converted these demands to decisions, issued these decisions as outputs which in turn served as feedback to the federation triggering new demand/inputs, and so on. The conceptualization is shown diagrammatically as follows.



Analysis of the system operation was concentrated upon selected conversion decisions, and these were subjected to two analysis questions:

1. How was the final decision reached? and
2. Who influenced whom about the nature of that decision?

These analysis questions then were applied to eight significant conversion decisions reached by the Board/administration system.

Criteria for the selection of these eight decisions evolved directly from the historical events which transpired during the experience. More specifically, four critical situations involving the strike, threatened or actual, were documented. These situations were viewed as critical because in each instance the normal functioning of the institution had been directly affected by and contingent upon the outcome of the Board/administration conversion of faculty demands to outputs. At no other points in the bargaining process was institutional function thus threatened specifically.

In each of these four critical situations there was an easily discernible pair of key conversion decisions: viz., (1) The Confrontation Decision - that decision which determined the Board/administration position which when expressed as output provoked the strike or its threat; and (2) The Resolution Decision - that decision which determined the Board/administration position which when expressed as output resolved the confrontation in the one case to avert the strike, and in the other three to settle a strike already in progress. A brief description of the substance of these four Critical Situations will be helpful as background.

Critical Situation A (Unit Determination) involved the basic issue of whether department heads were to be included in the bargaining unit. The faculty organization adamantly demanded their inclusion. The Board/administration position was just as adamantly one of opposition. The faculty organization threatened a strike unless their position was upheld. A compromise agreement averted the strike.

Critical Situation B (The Art Aide Issue) centered upon the faculty organization contention that an Art Aide whose service had been terminated by the administration on the grounds of reorganization prerogatives, had been unfairly treated and should be reinstated. The administration refused, citing its managerial right to reorganize the College. The faculty organization called a meeting for the morning on the day the College was scheduled to open. The Board/administration system refused to reopen the College. The beginning of the fall semester was thus delayed by some three weeks as a result of the first strike by the faculty organization. Agreement was later reached by both parties before a judge in chambers.

Critical Situation C (The Second Strike) was allegedly caused by the absence of movement by the Board/administration team on substantive issues in the eyes of the faculty organization, a contention bitterly disputed by the Board/administration bargaining team. This strike lasted only one day and was resolved again by agreement of both parties before a judge in chambers.

Critical Situation D (The Third Strike) again involved the alleged absence of significant movement by either team according to the other. An important distinction in this strike lay in the fact that by virtue of the earlier second agreement before the judge, the College was legally unable to secure an injunction, and the strike itself appeared legal under Pennsylvania Act 195. Resolution of this strike came some six weeks later with mutual agreement upon a master contract.

Findings. By means of the analysis, a pattern became discernible in the utilization by the system of the personnel resources available to it in the reaching of key conversion decisions in the four selected critical situations. In each of the four situations the three system constituencies were unified in their views leading toward and their support of the confrontation decision. However in deliberations leading toward resolution decisions, conducted as they were under relative extreme intra- and extra-system pressure, highly stressful polarization developed between the administration and the external agents, and the Board was forced to choose between the influence attempts presented by the former two system constituencies. The pattern is exemplified in the following discussion of the substance of the resolution decisions.

In Critical Situation A (March), the professional negotiators were successful in persuading the Board to compromise its confrontation decision by agreeing to negotiate the duties of department heads in a separate "side-bar" session. The administration was never persuaded, but its objections were to no avail.

Critical Situation B (September) saw professional negotiators again successful in persuading the Board to re-instate the Art Aide at full pay in a suspended service status with her complaint eventually to be settled via the negotiated grievance procedure. The administration never agreed with this resolution and fought vehemently against it. Ultimately the Board-approved resolution decision was actually reached by the legal Counsel external agent before a judge in chambers and without further apparent discussion with the Board or the administration even though the situation was entirely different at that point by virtue of newly-initiated student injunction proceedings bringing the parties to the Court.

The resolution of Critical Situation C occurred when legal counsel and one professional negotiator agreed, again before the judge in chambers, as a result of another requested injunction, to compress the time period required by P.L. 195 for the utilization of impasse-reducing mechanisms and to waive the College right to seek an injunction against a strike under the "clear and present danger" provision of the law in return for a faculty return to work. This agreement rendered a strike by the faculty, should one occur after the agreed-upon time period had expired, entirely legal; it also rendered the College legally powerless to stop such a strike. This resolution decision was reached unilaterally by external agents again with no apparent authorization from or communication with the Board or the administration.

The resolution decision in Critical Situation D occurred when the professional negotiators were successful in persuading the Board to ratify the contract again over the continuing objections of the administration.

Additionally, the analysis indicated that external agent success in persuading the Board was not limited to the attainment of resolution decisions. Increasingly as the bargaining wore on, the President and his chief administrator witnessed coveted positions and derivative recommendations disregarded by the Board in favor of positions recommended by external agents. In the final two months, this situation extended to the crucial matter of bargaining latitudes; _i.e._, what subjects were negotiable or mentionable and how far the negotiating team could move to effect settlement. Again in these cases, the pattern was characteristically the same; _viz_. negotiators presented views and recommendations, administration objected and presented counter-recommendations, and the Board opted for negotiator recommendations.

Conclusions. All evidence points to the inescapable conclusion that control of the decision-making process in the Board/administration authority system was gradually and imperceptibly assumed unintentionally by the external agents to the point where major critical decisions, although authorized _de jure_ by the Board, were actually reached _de facto_ by the external agents. It was this unintentional assumption of _de facto_ control of decision-making prerogatives that was the major cause of the internal stress among the three system constituencies although the situation was not clearly understood at the time. All administrators involved in the proceedings sensed that something was amiss in the decision-making process, but none could precisely identify the problem at the time because of such close and emotional involvement.

The stress phenomenon appears to have occurred as follows. In assuming initiative in extracting bargaining latitude from first the administration and next the Board, the external agents evidently threatened institutional _status quo_ even more than the collective bargaining situation itself. The threatening function is probably explainable by realizing that the external agents actually did link the Board and administration directly to the bargaining table. In any event administrators characteristically countered by protecting against the loss of coveted positions and being increasingly mistrustful and resentful of the external agents, and the lay members of the Board of Trustees were placed in the uncomfortable position of having to choose between the two.

As we have seen, this pattern of decision-making became entrenched. It also was completely self-reinforcing regarding the generation of stress. Every time external agents were successful in influence attempts with the Board, administrative resolve to resist the next external agent attempt at erosion of prerogatives and positions stiffened and resentfulness increased. The tragic fact is that both external agents and administrators were motivated by a perfectly defensible rationale: the administration sought to protect the institution; the external agents had to have bargaining latitude to attain compromise and reach settlement.

The lay Board, as we have seen, consistently inclined toward the views of the external agents and away from those of the administration. There were several reasons for this pattern in the writer's judgment. Firstly, supremacy in oratory and persuasion was clearly associated with the external agent negotiators, one a skilled and articulate labor relations lawyer, the other a polished and urbane college professor with a wealth of public school negotiations knowledge and experience. Here was clearly a case of "no contest". Secondly, the lay Board laudably was possessed of a broad commitment to the education of the CCP students, the more so in that many of the Board members had been associated with the College since the time of its creation.

Most importantly, however, the Board response was directly affected by the ad hoc, crisis-oriented nature of its participation in the experience. There is no evidence that systematic planning and preparation, involving Board members, administrators and external agents, ever occurred. This is not surprising given the Board's inexperience and the demands upon the time of board members in general and those at CCP in particular. It is accurate to state that the only direct involvement of the Board throughout the proceedings came at crisis moments whether these were of short or protracted durations.

As a result, then, of this lack of preparation as well as a keen sensitivity to its responsibility to keep the College in operation, the lay Board, beseiged by the external pressure surrounding strikes, student sit-ins, court injunctions and appearances, and Mayoral and Councilmanic dissatisfaction, was most vulnerable to the oratorical and persuasive skills of its negotiators.

It will be recalled that part of the writer's interest in the stress phenomenon characteristic of the CCP experience lay in the oft-expressed assumption that the stressful conditions characteristic of the decision-making process exercized a negative effect upon that process and its outcomes. An examination of this question is in order.

Following completion of the negotiations, it was most tempting to oversimplify and state that the observed stress and its causes, both personnel and situational, exercized negative and damaging influence upon the eventual substance of the contract settlement rendering it far more liberal and institutionally damaging than it would have been had the stress situation not existed. Indeed in a generalized way, this was essentially the administrative view following contract ratification. However, available evidence will not sustain such a conclusion. Other than conjecture there is no basis for comparison in that no positional agreements existed other than those negotiated.

It would be equally inaccurate, however, to suggest that the decision-making process was not adversely affected by the stressful conditions within which it was operative.

In the collective bargaining experience, as Howe suggests,[1] the Board and the administration ideally should agree upon substantive positions, bargaining limits, and the like most of the time in order that the Board side of the table may meet the challenge to the institution inherent in collective bargaining in the most effective manner possible. Clearly in the CCP experience the reverse was true, especially at the most crucial moments in the negotiations. Harmonious relationships between the Board and the Administration existed for the most part only in the reaching of confrontation decisions. In resolution decision-making, by contrast, we have seen that the Board found itself in the position of having to choose between polar recommendations presented to it by its supposed resource allies. Further this approach has been seen to persist in terms of bargaining latitudes and negotiability and mentionability of topics at the table. Thus in the four major decisions, as well as a host of "minor" instances, the administration openly was not supported by its Board. To suggest that this absence of support was received by administrators even passively is patently absurd. Early frustration turned to perceivable bitterness as the bargaining drew to a close.

The writer submits that this setting is far from conducive to the effective utilization of the intelligence and insight of participating administrators. Most predictably the stance taken by administrators was increasingly one of self-protection as opposed to a creative attempt at problem-solving. Accordingly, in that such system resource was effectively closed off in this manner, the internal stress experienced by the administration quantitatively exercized a negative effect upon the decision-making process. One must additionally surmise that the quality of resource utilization had to suffer as well by virtue of the strained atmosphere even though that contention is empirically unverifiable.

With regard to the Board members and external agents, it is legitimate to speculate that decisions reached were effected to some unmeasurable degree by the stress situation. Of particular importance here is the effect of rhetoric and persuasiveness in the charged atmosphere of crisis. This is not to suggest that substantive settlement decisions would necessarily have been different. It is to raise a question concerning how effective oratorical skill would have been had adequate planning, preparation and discussion replaced the ad hoc approach in Board participation. The writer must conclude that some effect, however unquantifiable, was exercized upon the Board role in decision-making by the particular approach to Board involvement adopted in the CCP situation and that some measure of the success in persuasion enjoyed by external agents regarding outcome decisions is similarly due to the chosen approach.

In general, stress in the CCP Board/administration authority system can be said to have resulted at least in part from the nature of Board involvement, and to have negatively effected the decision-making process in that it closed off resources in its administration and perhaps in the Board, which resource most certainly would have been helpful in responding effectively to the challenge of collective bargaining. Regarding final substantive contract positions, the potential for change was present had an alternative approach been adopted. It would be clearly improper to take that argument further because of the absence of any legitimate frame for comparison.

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[1] Ray Howe, The Community College Board of Trustees and Negotiations with Faculty, (Washington: American Association of Community and Junior Colleges and Association of Community College Trustees, 1973), p. 17.

In summary, the particular method of Board involvement adopted in the CCP bargaining experience was seen in the study as responsible in large measure, for two major consequences. The first was the loss of de facto trustee control in significant decision-making situations. The second was the closing off of considerable personnel resources available to the Board/administrative system as it sought to reach institutionally effective decisions on negotiation questions. Taken together these two outcomes suggest that something was significantly amiss in the manner in which the Board/administration responded to the challenge of collective bargaining. The writer submits that systematic involvement of Board members very early on in the planning and preparation stage of the process would have produced a far more efficient use of available resources and may well have affected the ultimate nature of the bargaining outcome.

In any event it is to be hoped that the foregoing analysis will be useful to other institutions facing similar collective bargaining situations.

THE CHALLENGE OF ALTERNATIVES TO COLLECTIVE BARGAINING

by
Fred L. Mathews
Chairperson, Board of Trustees
Southwestern Michigan College
Dowagiac, Michigan

There is no alternative to collective bargaining. Those who think it will never hit them are living in a dream world. This is not our choice but the union's choice. Appeasement may delay, but will make the process more difficult when it does come. There are, however, several alternate ways for a board to respond to the challenge of collective bargaining. I shall discuss what I believe to be the best way.

Lesson one is that there is no such thing as professional negotiations. In teacher-union negotiations we are dealing with an astute and determined opponent in a legal adversary relationship. There is nothing resembling professionalism involved in the process. Most boards, because of the lack of understanding of the process, lose.

We are engaged in a power struggle in education throughout this land. This power struggle is between the people and the teachers' unions for control of public educational institutions. The acceleration of states passing collective bargaining legislation and the inevitable national collective bargaining law means that no community college trustee in the United States will long escape being involved in the process. We, as representatives of the people, must rapidly become more sophisticated in our role if the public interest is to be preserved.

As trustees, our role is to represent the public, who own the institutions. To do less than give a one hundred percent commitment to winning at the bargaining table is an abdication of our public trust. Naive trustees who refuse to fulfill their roles do not serve the public interest, nor do they further the collective bargaining process. Only when trustees learn their roles as well as the union leaders have learned theirs will a maturity and balance come to the collective bargaining process.

Next in importance to understanding our role as a trustee is understanding what collective bargaining is for and what it is not for. Collective bargaining is not the place to discuss educational objectives, goals or problems. The bargaining table is the place to discuss wages, hours and working conditions. (Working conditions narrowly defined.) Those who let the negotiations wander into educational matters are making a serious error. The board's negotiating team must be firm on this point or collective bargaining becomes an octopus which consumes the institution and undermines the president in his fulfillment of his role.

The Realities of it All:

The most significant aspects of the collective bargaining process take place not at the bargaining table, but in preparation for negotiations. This will become very apparent as we now move the discussion to the "real world" of collective bargaining.

Sooner or later each of you on the management team, especially the board and president, will be subjected to a public attack by the teachers' union. This attack will be a sophisticated, well planned, political campaign with tried and tested techniques solely designed to destroy public confidence in the board specifically and the complete management team in general. It will happen so fast and so skillfully that most of you will see your own constituents and students turned on you with such effectiveness that you will be politically destroyed before you realize what has happened. You are dealing with a well financed, intelligent and highly trained political machine.

At this point I must say that the public relations battle is the whole ball game! Lose this and you may as well surrender early and save a lot of money and time. The union knows the importance of it and knows how to skillfully snatch public support from you. The board represents the public. If you lose support of your constituents you have lost all.

Public confidence in the integrity of the board must be preserved. Nothing, I repeat, nothing is more devastating to an institution than for the public to lose confidence in its elected trustees. Once this is lost it takes years to regain. Loss of public confidence in the board automatically results in loss of public confidence in the institution and everyone connected with it, including the teachers.

Public confidence and trust in the board can be maintained in the face of the union's public attack. However, certain conditions must be present:

(a) The board must understand the union's tactics and be willing to discard naive notions and beliefs.

(b) The board must be united in its own ranks and be willing to take the necessary steps to counteract the union tactics no matter how professionally distasteful these steps may be.

(c) The board must be composed of men and women who have public respect and confidence.

(d) The board's bargaining position must be sound, fair and firm.

A Scenario:

I now want to generally outline the pattern most large unions such as the NEA or AFT will use when they make the decision to go after you publicly. It will start when the union issues its first public news release. This release will claim that the contract talks are stalled and that the board is unreasonable. Money, the union statement will claim, is not the issue. All the union wants is job security, time to teach, and better education for the students. The board, the union will say, is standing in the way of all these good things.

At this stage, most boards, being politically naive, will convince themselves that they should ignore the news release.

The union will continue to issue news releases. The hard core members will use the classroom to convince students that the board is unfair and is the enemy of students. Ads may appear in local papers by the union telling how unfair the board is and listing board members names and telephone numbers. Letters to the editor from teachers and students will appear in the local press.

By now many boards crumble as public sentiment may have shifted in support to the union who after all claims it wants only better education and its statements have gone unchallenged by the board.

If by now the board has not surrendered, it is June and school is out. The union will suspend negotiations until August, just before school is to start, when they have a bigger club. In August, the union will renew its demands and immediately threaten strike. The union will convince the public and even the board that the teachers cannot work without a contract. Under strike threat some boards which did not surrender in the spring will now surrender. If you do not surrender, however, the union will probably announce that in the best interests of the students, the teachers have decided to report to work without a contract. The board is lullabyed into a false sense of security. The misuse of the classroom by the union leaders will again start. The pressure tactics of the spring will accelerate. After a few weeks the union will publicly announce that the teachers have, because of great dedication, been working without a contract (inferring work without pay), but the board is so unreasonable they can go on no longer. A strike deadline is set.

The strike, mixed with union news releases, upset students, unfair labor charges, fact finding, all orchestrated by the union in a predetermined plan, results in a demoralized board which now looks like a bunch of boobs. Usually by now the board members are fighting among themselves, threatened with recall petitions, so the board finally surrenders. The smiles and handshakes are photographed and published in the paper as the new contract is signed. The union smiles more broadly as the union has brought another board to its knees.

It need not happen this way! You need not let the union call the tune. I shall now attempt to detail a few of the more important rules you must follow if you want to prevent the type of catastrophe just outlined, which by the way, I have seen happen over and over again across Michigan and other unionized states.

Preparing for Negotiations:

1. Clear the board of people who will not accept the responsibility of a trustee. Prevail upon them to resign. This is a tough and serious business and is no place for weaklings.

2. Engage a good management oriented labor attorney who specializes in and is experienced in bargaining with teacher unions.

3. Develop a strike plan. Assume at this early date that a strike will occur and have a strike plan. I will discuss strike plans a little later.

4. Establish credibility with faculty, students, administration and the public. Do not get the reputation that you will submit to pressure groups or intimidation of any kind.

5. Establish one spokesman for the board. That spokesman, the chairman, should be the only public spokesman. Individual board members talking to the press is disastrous.

6. All letters and correspondence with the union must be carefully scrutinized. At impasse everything you have put in writing will come back to haunt you in court and/or in the press.

7. Establish two principles which must not, under any circumstances, be violated.

   (a) The negotiating team shall not make any offer which will result in deficit spending. Giving away reserves and other non-recurring income is, by the way, deficit spending.

   (b) Never give away any final authority. The board has the legal responsibility for the institution and is the body which can sue or be sued. To negotiate away the final decision making authority on any policy matter is irresponsible. "Shared Governance" is a term coined by the union and is designed to lead naive trustees down the primrose path. Only when the laws provide for shared responsibility should we talk about shared governance.

8. Decide on a bargaining team. Never have a board member on that team. The rationale for this is extensive but can be capsulized by pointing out that the union will do anything to get direct board involvement at the table. The board must set parameters for the team and keep close liaison with the team but not be at the bargaining table.

9. Make sure board members get publicity associated with the good things happening at the institution on a year-round basis. It is wrong to have trustees publicized only in times of crisis and negative events like collective bargaining.

At the Bargaining Table:

Instruct your bargaining team as follows:

1. Get all the union demands, including money, on the table before starting negotiations. Do not negotiate salary until all other items are resolved. Make sure all contract language is resolved before negotiating salaries.

2. Make an honest, reasonable attempt to settle on a fair and equitable basis, subject to the principles stated earlier.

3. Keep the whole board informed of progress or lack of progress. Maintain close liaison with the bargaining team.

4. Avoid discussion of non-relevant matters not directly tied to wages, hours and working conditions. Real and imagined grievances are not subjects for collective bargaining but for the grievance procedure.

Union Techniques at Impasse and How to Counteract:

At impasse the union will use most of the tried and tested techniques solely designed to destroy the credibility of the board and the individual trustee. The president is often included as a target of the union's attack. Some of these techniques are:

1. News releases: This will be the main union tool. The purpose is to turn public opinion against the board so the board must surrender. Failure by boards to respond to union news releases causes more boards to lose than for any other reason. Respond hard and fast. Explain how the union demands affect taxes and tuition. Explain the principles of public control of the institution.

2. Letters to the editor by teachers or students: These letters, often written by the union leaders, must be answered by an appropriate respondent.

3. Use of the classroom for propaganda: Document and put a report in the personal file of the faculty member doing this. Isolate the unprofessional faculty members from the professional members.

4. Attempts by the union leaders to disrupt board meetings: Make sure your board bylaws provide procedures to assure decorum and control of board meetings. Negotiations with union leaders should never take place at a board meeting. Never allow the union leaders to circumvent your bargaining team by way of the back door. Never let the union use public board meetings as a propaganda forum.

5. Public offer by the union to agree to binding arbitration by a panel of citizens: Reject this! You as a board are a citizen group select by the voters to represent them. To abdicate and turn the collective bargaining decisions over to others is wrong and irresponsible. This technique by the union is a trap too many boards fall into.

6. Telephone calls by union leaders to individual board members: This is a divide and conquer technique. Trustees must refuse to discuss negotiations with any individual union leader or other college union employee. To do so is disatrous and has serious legal implications which can lose the ball game for the board.

7. Mediation: Do not give away in mediation what was imprudent to give away at the bargaining table. Mediators are assigned to get settlements whether realistic or not. Beware of this process.

8. Fact finding: This is a farce. Publicly reject the recommendations of the so-called fact finder before the hearing is held. It is ludicrous to assume that some outsider coming in for one evening knows the facts involved.

9. Recall petitions against board members: Expose this for what it is as just another union instigated tool of harrassment. Publicly promise to publish the names of petition signers in the press.

10. Censor of President: Respond by strong board support of the president.

11. Accreditation Agency Involvement: The union leaders will often contact the accrediting agency to enlist its support. If you are involved in an accreditation visit, the union will scuttle accreditation, if possible, to accomplish its short term goals. Most accreditation examing teams are pro-union and anti-board for obvious reasons. If this happens, notify the accrediting body to stay out of something which is none of its business. Notify the Accreditation and Institution Eligibility staff in the United States Commissioner of Education Office. An accrediting agency so involved is in violation of Federal Criteria to which it must adhere.

The Strike - The Union's Ultimate Weapon:

If you have a unified board and respond to the challenge as outlined previously, you probably will not have a strike. A strike by the union is the coup de grace normally reserved for use against divided and weak boards (exceptions do occur). If a strike does occur and you have successfully handled your public relations and have not lost the support of your constituents you are then in a position to select an appropriate option. These options are:

Option No. 1 Fire the strikers and replace them with a new faculty. This is the response recommended if:

(a) state laws prohibit strikes.
(b) you are other than a large metropolitan college with a thousand or more faculty.
(c) you have a tough and united board.

Option No. 2 Close the institution until a settlement is reached. I personally do not favor this option. As trustees we have a responsibility to the public and students to keep the institution operating. It is a union victory if they are able to indefinitely close the institution.

Option No. 3 Hire substitutes for the duration of the strike. This is practical in some instances. However, many substitutes cannot take the abuse heaped upon them by the strikers. This option is however, better than allowing the institution to remain closed for long periods.

Option No. 4 Injunctive action by the court. Next to firing this is probably the second best alternative to try. The courts have been timid in issuing injunctions even in the face of flagrant violations of the law but are now beginning to act more responsibly. Teachers working under a court order does not create a happy situation but is better than a long term closing.

Infiltration, A New Power Play:

The unions have now embarked on a new power play which threatens the heart of every public institution. The unions are now, with massive sums of money and ruthless tactics, attempting to elect their own people or sympathizers to Boards of Trustees. Apathy on the part of the public and boards has resulted in several boards being taken over from the inside by the union. When this happens, the union is then in the enviable position of negotiating with itself.

When leaders of the large unions boasted that in a few years boards and administrators would be working for them, they meant what they said. Board members who truly represent the broad public interest must conduct vigorous political campaigns with good candidates to keep the control of the institution in the hands of people who will represent only the broad public interest.

In closing, let me speculate that many of you will look upon this as an undue hard line. To those I can only say that at our institution:

(a) we have never had a strike
(b) the board has maintained strong community support in face of a strong union thrust
(c) we have never had an unbalanced budget
(d) we have a talented and capable faculty
(e) faculty enthusiasm for the union has declined
(f) student enrollment has increased every year
(g) the educational program is sound
(h) the board does not have the affection of, but has the respect of the faculty.

Collective bargaining is here to stay. Trustees and administrators must now learn how to successfully cope with it or the ultimate consumer, the student, will be the loser. The student does not win when we must impose higher tuition to pay non-productive salaries. Neither is it in the student's best interest to allow the institution to become a headless horseman with no direction. Ultimate board control must prevail if we are to maintain public control of public education.

COMPULSORY PUBLIC-SECTOR BARGAINING:

THE DISSOLUTION OF SOCIAL ORDER

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The question of all questions in political economy not too long ago was: What should the functions of government be? Today it is: Will government be?

Among the numerous, grave, and perhaps critical threats to the survival of civil order in the United States, one more ominous than the rest stands out: the movement in all the states and in the federal government to compel collective bargaining between our governments and unions acting as representatives of government employees. Although this movement rests upon a series of incredible distortions and misrepresentations of fact, is propelled by premises, theories and arguments which cannot withstand serious examination, and creates chaos in every branch and sector of government where it takes hold, it is nevertheless gaining ground year by year, even day by day, in all our governments--federal, state, and local.

My thesis here is that this movement must be stopped if decent social order and effective representative government are to survive in this country. The nation, the states, the cities large and small, are already besieged by a horde of other destructive threats. Everyone knows this. Because understanding of these other threats is so widespread, however, there is at least room for hope that they will be dealt with more or less effectively. But profound ignorance at every level prevails on the issue of compulsory public-sector bargaining, and the powerful forces determined to inflict it upon the country therefore meet almost no resistance at all, let alone informed, determined, and effective resistance. My purpose is to stimulate such resistance, to inform it, and thus to contribute to its effectiveness. For if such resistance fails to appear, the virtually certain emergence of compulsory public-sector bargaining universally in this country--especially when this destructive institution combines with the other crises which are breaking the country apart--is bound to bring about chaos, anarchy, and, ultimately, tyranny.

Factual Distortions and Misrepresentations

The first thing we need readily at hand is hard and accurate information concerning the condition of public employment in this country, the status of our public servants, the way they are treated, the rights, powers, privileges, and immunities which they already possess. For among the most serious misrepresentations fueling the drive for compulsory public-sector bargaining are the contentions that our public servants are underpaid and mistreated, that they are denied the rights of "freedom of association" which prevail in the private sector, that they will never be satisfied till they have those same "rights", and that until they do there will be serious "unrest" in government employment, strikes, and all the other bad things which, the leaders of organized labor say, union representation magically causes to disappear.

The fact of the matter is that public servants in this country have always enjoyed the right of free association when that right is properly understood as meaning the privilege of joining any lawful private association. It is true that till recently in some states a person wishing to retain civil-service status might have to forego joining labor associations not composed exclusively of civil servants of the same governmental unit. However, this could in no proper view be regarded as an unconstitutional or even unfair disability. As Justice Holmes said, in upholding the authority of government to insist that its employees not play politics:

> "...the petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman".

Be that as it may, civil servants have now for many years in most states had a right to join full-fledged trade unions without endangering their government employment. Indeed for the last six or seven years they have enjoyed such rights, under the U.S. Constitution, even in the few states which positively prohibited public employees from joining unions. This result was reached without the benefit of any statute, state or federal, protecting the jobs of civil servants who wished to join unions. That being the case, it is accurate to say that the associational rights of civil servants are greater than--not inferior to--those of private employees. For private employees acquired such rights only from labor statutes like the National Labor Relations Act. Prior to those labor relations statutes, private employers were privileged to refuse to employ persons who insisted upon joining unions.

In view of these facts and developments, it seems fair to conclude that what bothers the unions is not that public servants are denied the rights of free association but that too few have availed themselves of this "right". The latest available figures indicate that of well over 11 million state and local civil servants only a little over one million have chosen to join unions, while another two million have preferred to join associations of other kinds, despite their universally prevailing right to join unions without fear of loss of employment.

One of the reasons, perhaps, for this failure of more civil servants to join unions is that in a substantial majority of the states right-to-work laws are in effect for civil servants, even when they are not in effect for private employees. In those states more employees have not joined, probably, simply because they have not been forced to join.

We are now in a position to understand why unions are so anxious to have the states and the federal government pass compulsory public-sector bargaining laws. Those laws, at least in the version pushed by the unions, usually provide for either permissive or mandatory "union shops"; that is, they contain provisions imposing union membership as a condition of employment. The insistence upon such laws demonstrates that unions are not really interested in extending the right of free association to public employment. That right is already there. What the unions want is to demolish the right; they want to be in a position to force union membership upon unwilling civil servants.

As yet only a minority of the states has passed full compulsory public-sector bargaining laws; and a still smaller minority (11 or 12) have passed laws under which union membership may be made a condition of public employment. This is the state of affairs which the public-sector unions find unsatisfactory. The contention that public servants are denied rights of free association is false--a smokescreen designed to conceal what is really going on.

To sum up: the union drive for compulsory public-sector bargaining laws has nothing to do with any desire to expand the rights of public servants. What it has to do with is the overweening lust for power which characterizes most union leaders, especially in the public sector. They want such laws because when they get them they will be in a position to arrogate to themselves, out of the fund of rights which now belong to public servants, the power to compel all civil servants to accept them as exclusive bargaining representatives and then, on top of that, the additional power to make unwilling civil servants pay for the union services which they do not want.

Naturally, no public-sector union leader will admit to such an impolitic objective. He will move on, instead, to the second series of contentions which, he hopes, will convince legislators and an unwary public that compulsory public-sector bargaining laws are needed. Weeping copiously, he will lament the sad conditions in which public servants work, how terribly abused they are in terms of wages, hours, and other terms and conditions of employment. His contention will be that if only public servants have universally conferred upon them the blessings of collective bargaining all their complaints, all their troubles, will disappear.

Here again, what the public and the legislators need is a good strong dose of fact. The truth of the matter is that the wages of government employees have easily kept up with, when they have not materially surpassed, those of comparable private-sector employees. According to the U.S. Department of Commerce, while state and local government employment was rising by 151 percent between 1951 and 1972, their monthly payrolls increased by 596 percent.

The most detailed and authoritative private reporting service in the field, the Government Employee Relations Report published by the Bureau of National Affairs, carries almost each week news items indicating that government employees are by no means coming out on the short end. There is no need here to place undue emphasis upon such extraordinary phenomena as the $17,000 annual wage recently extracted from the taxpayers by San Francisco's street-sweepers. The average hourly wages of all civil servants for actual working hours are: in Ohio, $4.94; Minnesota, $5.13; Michigan, $6.67; California, $7.47; Alaska, $9.53.

As to employees of the federal government, a December 1974 article in The Washington Monthly, interestingly entitled "Government Unions: The New Bullies on the Block", tells an even more dramatic tale concerning the generosity with which public employees are treated. All government wage scales--federal, state, and local--are by law required to be comparable with those prevailing in the private sector. (Incidentally, they have to be if government is to attract employees.) Perhaps the most suggestive fact pointed out by The Washington Monthly article is that at least federal government employees are quite markedly outdistancing their colleagues in the private sector:

> "...federal employees are among the highest-paid workers in the country. One third of all federal workers on GS scale are paid more than $15,000, and receive supplemental benefits equal to a third of their salaries. Officially, federal white-collar employees are supposed to be paid salaries 'comparable' to what they would earn in private industry. But in practice, many federal employees, especially those in the middle grades and those just below the highest paid 'supergrades', are paid significantly more than they would get on the open market. For example, the appropriate salary for all GS-13's is determined by examining only five professions--attorneys, chief accountants, chemists, personnel directors, and engineers. Each of these positions (with the exception of personnel directors) demands greater training and technical skill than most government GS-13's possess. And the federal government has become so top-heavy that, for example, 52 percent of the employees of the Department of Transportation are GS-12's or above. The starting salary for a GS-12 is $18,463."

We hear a great deal about how gravely abused public employees are under the civil service merit system--and how much they would be benefited by replacing that system with union representation. Two comments should suffice here. In the first place, the civil service merit system, now in effect in all public employment, represents the most serious and most comprehensive attempt ever made anywhere to insure just treatment of employees on the job. In the second place, the assertion that union representation will insure better, fairer, more humane treatment for employees than the civil service merit system does is only assertion. All experience from the private sector seems to indicate that employees represented by unions are, to say the least, no happier or more contented than the vast majority of private-sector employees who have chosen to remain nonunion. By the latest count union members constitute considerably less than one-fourth of the private labor force. Moreover, it is reasonable to believe that a large number of that one-fourth belong to unions only because they must in order to keep their jobs. For something on the order of 80 percent of all collective agreements contain provisions requiring union membership as a condition of employment.

The state of soul or mind called "alienation" may exist in government employment, but it is certainly not confined uniquely to nonunion civil servants. In all probability it is a permanent and ineradicable aspect of the human psyche. We live in a universe which we have not made and which we can remold nearer to our desires, apparently, to only a very small degree, if at all. The idea that the brutal, insensitive collectivism which animates unions will provide a cure for alienation is absurd and ridiculous. Alienation is a condition of the individual mind or soul; mass, collective action cannot cure it. By expanding the size and scope of the authority of large collectivities at the expense of individual autonomy, compulsory public-sector bargaining is more likely to increase alienation and individual discontent than to reduce it. One thing is certain: forcing civil servants to accept union representation when they do not wish to do so is not going to make them any happier.

Fallacious Premise: The "Private-Sector Analogy"

The factual misrepresentations, rank as they may be, are far less serious than the false premises and logic of the drive for compulsory public-sector bargaining laws. We must have such laws in government employment, we are told, because we have them in the private sector, because they have worked so well there to produce industrial peace and worker satisfaction (so they say), and because without them there will be great strife and unrest in government employment.

It is difficult to judge which is worse--the bold and brassy error in these contentions, or the profoundly significant omissions they tend to conceal.

Quite obviously it would not follow that we should have compulsory collective bargaining in the public sector merely because we have it in the private sector--even if the claims made for it in the private sector were true. One would have to establish (at least) that there are no material differences between the public sector and the private sector: no mean task, since, as we shall see, the public and private sectors are basically and radically different in all the ways that matter most.

Before going into that, however, I believe it desirable to make some brief observations about our private sector labor policies. In the first place, as already noted, only a minor fraction of private-sector employment is subject to collective bargaining, despite the fact that for forty years now the federal government--and especially the National Labor Relations Board--has been doing its best to induce all private-sector employees to accept unionization. Year after year hundreds of thousands of private-sector employees have spurned NLRB's inducements. Moreover they have spurned them in the most definitive manner possible: in secret-ballot elections conducted by the NLRB itself under rules heavily weighted in favor of the unions.

One would need to be out of touch with reality to contend seriously that there is more strife, more labor unrest, or more alienation in the vastly preponderant nonunionized part of private employment than there is in the unionized quarter. In those sectors of private employment where they have taken hold, our compulsory collective bargaining laws have not produced labor peace and harmony, much less consumer-serving productivity. On the contrary, the results have been disastrous in at least six ways.

1. Our private-sector compulsory collective bargaining policy has condemned countless thousands of working persons who actively oppose union representation to a condition of serfdom by forcing them to accept and to pay for union representation which they do not want.

2. It has severely hampered and rigidified and thus made much less profitable and efficient many of our basic industries, to the enduring harm of the communities served by those industries.

3. In the opinion of many if not most of the outstanding economists of this country and of Europe, it has done great damage to the market economy in general and to the interests of workers and consumers in particular.

4. The industries most subject to union control may be characterized by high nominal wages, but, as in construction and the railroads, they are likewise characterized by extensive and apparently permanent under-employment. A bricklayer's scale of $15 per hour is not all that great if as a result bricklayers are unable to find work.

5. Our private sector labor policies have placed in the leaders of the big unions enormous political power, power which is normally directed in vicious, antisocial ways. Examples are minimum wage laws which make supernumeraries of our young people, especially young blacks; and the numerous types of interference with free trade which are pushed mainly by the big unions. In such instances--and in countless others which could be listed--the leaders of the big unions created by our compulsory collective bargaining policies have set themselves boldly and arrogantly against the best and most humane interests of the community as a whole.

6. Finally, it is simply untrue to say that the introduction of compulsory collective bargaining statutes in the private sector brought labor peace where strife existed before. Take a look any year at the Handbook of Labor Statistics, prepared by the U.S. Bureau of Labor Statistics. Strikes more than doubled the year after the National Labor Relations Act became fully effective. This had to happen. As we shall presently see in more detail, unions are nothing at all if they are not highly professional strike agencies. Encourage unionization and you encourage strikes. It is as simple as that. To believe that this universal truth would not apply in the public sector would be to deny the validity of all relevant experience and assert that reason has become obsolete.

If my all too abbreviated critique of our private-sector experience has any merit at all, it suggests that we should repeal the statutes compelling collective bargaining in the private sector rather than extend them to the public sector. However, even if we were to shut our eyes to that experience, even if we were inclined to agree that compulsory collective bargaining has "worked" in the private sector, it would remain true that universalizing compulsory collective bargaining in the public sector would be an extremely unwise and probably a fatally destructive move.

There is no proper analogy between the public sector and the private sector. Business is one thing. Government is in every sense relevant to this discussion entirely and categorically another. As Woodrow Wilson once said,

> "The business of government is to see that no other organization is as strong as itself; to see that no group of men, no matter what their private business is, may come into competition with the authority of society."

In his Farewell Address, George Washington said that,

> "The very idea of the right and power of the people to establish government presupposes the duty of every individual to obey the established government."

John Austin, one of the greatest jurists of the last hundred years, understood the concept sovereignty as few before or after him have understood it. His position was that "the all-powerful portion of the community which makes laws should not be divisible, that it should not share its power with anybody else".

What these great men were saying is that if government is to serve the role in society which must be served if there is to be society--civil order--it must have sovereign, supreme and undiluted, power: power greater than that possessed by any other person, or group, or group of groups.

This is the fact which utterly demolishes the private sector analogy. There is nothing basically destructive of private business in a law, however unwise that law may be, which forces employers to deal collectively with employee representatives on terms and conditions of employment. To repeat: it may be wrong to force dissident private employees to accept unions which they do not want and to compel private employers to bargain collectively with unions when they prefer to deal with their employees individually.

However, no social breakdown occurs as a consequence of compulsory private-sector bargaining. This is true in part because employers are compelled by the nature of things in a free society to bargain with their employees individually or collectively, anyway, if they wish to have employees; in part because few private employers, if any, are inclined to yield without resistance to extreme, anti-economic union demands; in part because private employers rarely if ever provide goods and services which cannot stand interruption for more or less sustained periods; and in part, finally and most importantly, because no private employer occupies a role so central and so indispensable to the survival of civilized society as all our governments--federal, state and local--do.

Monopoly is normally a bad thing in the private sector. In the public sector undivided, monopoly, sovereign power is absolutely indispensable to any civilized social order. Law is either universal, supreme, and exclusive--or it is nothing. Imagine two competing police forces, two competing armies, two competing judicial systems! The name for such a state of affairs is anarchy, not civilized order.

Because government is and has to be monopolistic in character, it also must perforce stand outside the market. Political considerations, not economic considerations, must direct its activities. The consensus of the whole community, not the private interests of individual producers and consumers, must determine the way in which government operates.

Government cannot, as private business does, allocate its resources and expenditures on the basis of balance sheet considerations of profit and loss. All its decisions--as to how many police or fire stations or schools or garbage trucks should be bought or employees hired--all such decisions are political decisions. Ludwig von Mises has made the point:

> "The objectives of public administration cannot be measured in money terms and cannot be checked by accountancy methods. Take a nationwide police system like the F.B.I. There is no yardstick available that could establish whether the expenses incurred by one of its regional or local branches were not excessive.
>
> ..."In public administration there is no market price for achievements. This makes it indispensable to operate public offices according to principles entirely different from those applied under the profit motive.
>
> ..."(The government) must define in a precise way the quality and the quantity of the services to be rendered and the commodities to be sold, it must issue detailed instructions concerning the methods to be applied in the purchase of material factors of production and in hiring and rewarding labor..." (Emphasis supplied.)
>
> ..."It would be utterly impracticable to delegate to any individual or group of individuals the power to draw freely on public funds. It is necessary to curb the power of managers of nationalized or municipalized systems...if they are not to be made irresponsible spenders of public money and if their management is not to disorganize the whole budget."

It should be obvious by now that--and why--government cannot share with unions its power over the public service and at the same time retain its character as government, responsible to the community consensus alone. Even if decisions concerning the course of government and of government employment could be made jointly by duly elected or appointed officials and union negotiators, there would be a dissolution of sovereignty and a dissipation if not destruction of popular government. But the unfortunate fact is that under compulsory public-sector bargaining there will not be merely a sharing of sovereignty; common sense and experience indicate that the sovereignty is bound to come to rest, ultimately, in the public sector unions.

I repeat: this is bound to happen. Proponents of compulsory public-sector bargaining contend that it is the only way to eliminate strife and unrest in public employment, but the fact of the matter is that such bargaining is a means of insuring strife and unrest in the government service. From such strife and unrest, the public-sector union leaders are bound to emerge in this country--as they already have in England and in Italy--as our ultimate rulers. For, as Henry C. Simons called them, unions are "battle agencies." They have to be. In order to get and keep members, they must continuously seek and bend every effort to get more than the employers of their members are willing to pay. By now, even the dullest observers of this field are aware that politicians and political officials tend to be far more generous with taxpayer money than private businessmen are with stockholders' money. Nevertheless, there comes a point, even in government, when the never-ending demands that unions are compelled to make must be met with a straightforward "No".

What happens then? Well, the history of the last decade is instructive. In order to keep their members, the unions must refuse to take "no" for an answer. Over the last decade the number of public employee strikes has increased by well over 1100 percent. This is what refusing to take "no" for an answer means among the public-sector unions: Striking. And the fact that until just the last year or so (and then in just a few states) public-employee strikes were (and are even now in most states) unlawful--this fact has neither discouraged the union leaders from calling strikes, nor made their members hesitate to participate in them.

If these facts prove anything, they prove that--not the law, not duty to the public, not respect for judicial orders--but union leaders have become for unionized public servants their sovereign liege lords. When I say that widespread adoption of compulsory public-sector bargaining laws will inevitably result in the destruction of popular sovereignty and in its replacement with the virtual anarchy of a sovereignty split among the leaders of the more critically placed public-sector unions, these are the facts and the common sense analyses upon which I rest the prediction.

It is strictly speaking absurd to suggest that compulsory public-sector bargaining laws are needed in order to eliminate strife and unrest in public employment. Before such laws were passed in the late fifties and the sixties, there were no strikes to speak of and no other significant forms of mass unrest in public employment. Before public agencies, especially in such places as New York City, began bargaining collectively with unions representing their employees--i.e., began recognizing unions as exclusive bargaining representatives and thus abdicating to unions the sovereign powers of government--there were no public-sector strikes, none to speak of, anyway.

The strife and the unrest have come since unions have been recognized in some states and cities as exclusive bargaining representatives. Significantly, the strife and unrest have been localized in precisely those jurisdictions. It is largely absent in the localities which refuse to recognize unions as exclusive bargaining representatives of public employees. And one may confidently conclude that it would be entirely absent if militant trade unionism were excluded from public sector employment--as a proper respect for the duties and powers of government would require.

Such a state of affairs--leading to peace and harmony rather than chaos and war between government and their employees--would not require that the right of free association be denied to public employees. Public employees might very well join or even be encouraged to join associations confined to civil servants. Indeed, as we have seen, ever since the first civil service laws were passed in this country (and they are now universal), public servants have been free to form and join their own civil service organizations.

Chaos--Anarchy--Tyranny

In a drastic reversal of former opinion, state courts all over the country have been upholding the constitutionality of recently passed compulsory public-sector bargaining laws. Less than thirty years ago, the consensus among judges was precisely to the contrary. All across the land they had been holding that for a public agency to bargain collectively on the terms and conditions of public employment would involve an unconstitutional abdication and delegation of governmental power and thus a betrayal of representative government.

Nowadays, however, we read repeatedly in judicial opinions that there is nothing wrong in such laws. Some of the state courts have gone so far as to uphold laws providing for compulsory arbitration of public sector labor disputes. Going even further, some have held that public servants have a right to strike.

Despite these abrupt changes of opinion, however, a curious movement is afoot among the judges. Several of the courts which have gone furthest in welcoming the abdication of sovereign power implicit in compulsory public sector bargaining laws, have begun quietly and unobtrusively to see to it that *their* sovereign powers remain unimpaired! Some have been holding that court employees are excluded from the compulsory bargaining laws. Others have been holding that insofar as court employees are concerned, the proper party to do the bargaining with them is not a state or local administrative officer, but the presiding judge.

When the state or local administrative officers object to these decisions, contending, among other things, that they are scarcely likely to get fair hearings on the matter from judges who are themselves interested parties, the courts are brought face to face with the destructive and contradictory character of all compulsory public-sector bargaining laws. They are forced to see willy-nilly that such laws simply cannot be reconciled with any intelligible concept of sovereignty.

In one case the complaining county commissioner charged that the county was being denied due process of law and equal protection of the law because his opponent in the case was a member of the very judiciary which was deciding whether he, the county commissioner, or his opponent, the county judge, was the appropriate bargaining agent! The court could only reply, lamely, that it would do its best to insure a fair hearing.

Judicial absolutism has long been a problem in this country. Cases such as the ones we have just reviewed indicate that the problem is approaching a critical state. At the moment, the result of the compulsory public sector bargaining laws prevailing in some of the states is that the ultimate power of government lies in the courts, the least representative branch of government. A number of considerations suggest, however, that this condition is strictly temporary: that before long the ultimate sovereignty will fall to the public-sector union leaders who, besides being representatives of only their own interests, not of the electorate, are not in the slightest degree a legitimate branch of government.

The authors of the Federalist knew what they were talking about when they referred to the judiciary as the weakest branch of the government. The judgements and decisions of the judiciary are meaningful only to the extent that the general public respects them and the executive branch of the government enforces them. What can judges do about public sector strikes? If we are to take experience as our guide, the answer has to be: nothing.

To repeat, thousands of public-sector strikes have been called over the last decade--all illegally. However, the illegality made no difference: the unions called the strikes anyway, and, over the years, millions of police officers, firefighters, school teachers, garbage collectors, highway-maintenance men (during blizzards, yet!) went out, apparently stirred only by contempt of the possible court actions against them. Indeed, when a New York court enjoined a garbagemen's strike, their union leader, John DeLury, instead of obeying the injunction, in the words of New York's highest court, "went to the other extreme, actually urged the men to make the strike 'effective 100%'".

All competent scholars in the labor law field are aware that anti-strike injunctions are almost impossible to enforce, even in the private sector, where, at least, the forces of government are available to attempt to induce respect for the court orders. But what prospect is there for enforcement of a court order against a public sector union when all civil servants are unionized, as they will be if compulsory collective bargaining laws prevail universally in this country? Who is going to enforce an injunction against a strike by a policeman? the National Guard? the Army?

The situation is even grimmer than the foregoing analysis suggests. In fact, public sector strikes do such enormous harm in such a brief time that court actions aimed at enjoining them are usually an exercise in futility. Even before the legal papers are filed, the greater part of the damage done by a good many public sector strikes is already done. The strikers have the community over a barrel. It has to give in. According to one study of events in the experimental laboratory of our subject, the City of New York, the vast preponderance of the public sector strikes called there never reach the courts at all. The harm they do is so vicious that the striking unions are in a position to extort, as part of the price for going back to work, an agreement from the city authorities not to prosecute the strike, despite its illegality!

Conclusion

The only conclusion possible from the foregoing discussion is that compulsory public-sector bargaining is incompatible with both representative government and the kind of sovereign governmental power needed if we are to live in a free, peaceful, and decently ordered society. Under a universal regime of compulsory public-sector bargaining, the sovereign powers will belong to neither the people nor their duly elected and appointed representatives. They will be fragmented and dispersed among the most power-hungry leaders of the public-sector unions. Those persons, not our elected representatives, will be our rulers.

Not all of us will be willing to accept them as rulers; indeed, no one in his right mind would accept any of the present leaders of the public-sector unions as his sovereign authority. This being true, the result will have to be, in order: chaos, the situation prevailing when sovereignty is divided among the public-sector union leaders; anarchy, the condition resulting from the refusal by all sensible persons to accept the feudal lordship of the public-sector union leaders; and finally, tyranny, the state of affairs which generally succeeds anarchy because of mankind's insuppressible and ineradicable need of order if life is to proceed at all satisfactorily.

COLLECTIVE BARGAINING IN TWO-YEAR INSTITUTIONS:

YESTERDAY, TODAY, AND TOMORROW

by
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I. HISTORICAL PERSPECTIVES*

Whatever its merits, collective bargaining in higher education is an idea whose time has come. According to a recent Ladd-Lipsett study, nearly three-fifths of all the faculty of public 2 and 4-year institutions endorsed the principle of collective bargaining. Furthermore, in the past 10 years the number of faculty members in community colleges covered by collective bargaining has grown from zero to 61,880 at 315 campuses in 29 states. This growth followed shortly after the growth in the number and size of community colleges. For instance:

--The number of public 2-year institutions increased from 310 to 654 from 1960 - 1970.

--Enrollment went from 355,967 students to 2,081,723 students in the same time period.

A host of problems accompanied the burgeoning of public 2-year institutions and helped create the climate for collective bargaining. Examples include increased student-teacher ratios, increased contact hours and/or preparations, and the development of formal organizational structures. But perhaps the most serious problem was the shortage of qualified college teachers. Consequently, many community college faculty members were recruited from secondary schools. These teachers often arrived at community colleges with secondary school union experience, and they did not find the community college milieu so different that they were antipathetic to union goals. Thus, the seed of collective bargaining, which had taken root in the secondary schools, was transplanted to community colleges.

Like the secondary schools, many community colleges "had a tradition of administrative domination and niggardly faculty participation." Shared governance was rare and was considered as ideal for 4-year institutions. When one Michigan community college educator was asked if his college had shared governance in the mid-sixties, he replied, "The faculty didn't share governance. They shared offices."

Though the above-mentioned problems made collective bargaining more attractive to community college faculty members, there are three principal reasons for the growth of community college collective bargaining:

1. The passage of state public employee collective bargaining laws, such as New York's Taylor Law of 1967.
2. The "spin-off" effect in those states with a history of industrial unionism. Illinois is an example.
3. Use of the K-14 system in states such as Washington and Michigan

The following discussion reveals some of the experiences of several schools in states which exemplify the three principal causes of community college collective bargaining. All four of the schools mentioned herein had collective bargaining early and still have it today.

A. New York

In New York, collective bargaining in community colleges sprang out of a state public employee bargaining law, the Taylor Law. (Many believe that education was included in the Taylor Law because Albert Shanker, President of a New York City AFT Local went to Albany and demanded that the bill be amended to include education.) After the bill passed in 1967, the community college faculties were in no hurry to organize. The sole exception before 1969 was the Monroe Community College faculty. A few faculty members made an aborted attempt at organization before passage of the Taylor Law but did not succeed because salaries and fringe benefits were high and faculty interest low. However, once the collective bargaining law was passed, the faculty quickly organized its own union--the Faculty Association--which was recognized as its bargaining agent in 1967. They did so to establish early their hegemony in the bargaining relationship, fearing the control that might come if an outside organization, such as NEA or AFT, succeeded in organizing the faculty. In the early years (1967-69), Faculty Association bargaining interests were primarily economic: salaries and vacation time for lower-echelon administrators, who were also in the bargaining unit. In 1969, the Faculty Association affiliated with NYSUT to obtain technical and legal assistance on collective bargaining problems. Since that affiliation, the parties have gone to impasse virtually every year. Each side offers a different reason for the impasses. The administration believes that the NYSUT affiliation has made the faculty more militant. However, the union president, Judith Toler, says the faculty have become "more interested in faculty autonomy and having collegiality guaranteed by contract."

Today the Faculty Association appears to be taking a lower profile on economic issues because of the fiscal austerities thrust upon some counties, including Monroe County. The faculty has taken note of the retrenchment problems of SUNY schools and was distressed by talk of retrenchment at nearby SUNY College at Brockport. Depending on the vagaries of state and local funding, upcoming negotiations at Monroe Community College will probably focus on retrenchment problems. Though the administration is looking for ways to maintain faculty jobs without sacrificing the high quality of education, some fringe benefits such as sabbaticals may be curtailed, tuition may be increased by as much as $100, and a few adjunct faculty members may be layed off.

B. Illinois

Illinois allows collective bargaining by judicial fiat (Chicago Division of the Illinois' Education Association v. Board of Education of the City of Chicago, 1966). Strikes were outlawed, also by the courts (Redding v. Board of Education, 1965). To date, 20 of the 48, 2-year public institutions in Illinois have contracted with their faculties (most of the unionized campuses are in industrial areas). The administrations of the seven Chicago City Colleges (all community colleges), for instance, have bargained with their faculties since 1966. Before that, the colleges were part of a K-14 city school district. In 1966, the 2-year colleges were severed from the secondary schools and given a separate board of trustees. That same year, the AFT organized the faculties and was recognized by the new board as bargaining agent. Negotiations began on October 24, 1966. After 35 negotiating sessions and two 3-day strikes, a 63 page contract was signed by the parties on May 2, 1967. The second strike was settled by the Mayor, who acceded to virtually all of the union demands: (1) a $320 first year salary increase plus an additional $180 increase the second year; (2) a 12-13 contact hour teaching load: (3) compulsory arbitration; and (4) mandatory consultation on how to spend unanticipated income. The following lesser items were included in the contract:

1. Academic calendar reduced from 40 to 38 weeks.

2. No cost medical and life insurance.

3. Liberalized sick leave, with accrued sick leave to be paid upon retirement at age 65.

4. Sabbatical leaves.

5. Tax sheltered annuity through payroll deductions.

6. Dues check-off system.

7. Union consultation on selecting department heads, new faculty, and on granting tenure.

8. Strict seniority for full-time teaching programs.

In return, the union agreed to do what it had a legal duty to do -- not strike. Both sides were unanimous on one point: the union had obtained "a group of material and non-material benefits which made faculty gains of the past half century in the Chicago City College pale by comparison." One local AFT official called the contract the best the AFT had ever negotiated.

C. Washington

In the state of Washington, community college faculty were, for bargaining purposes, part of the K-14 system until the public sector collective bargaining law was passed in 1971. The community colleges now have their own bargaining units, though the K-14 system is still intact. Since passage of the 1971 law, collective bargaining has proven to be popular with faculty members - 25 of 27 public 2-year institutions in Washington now have contracts with their faculty.

Prior to enactment of the 1971 collective bargaining law, however, a number of K-14 school districts had contracts with their faculties. For example, in 1946, Olympic College (then a trade school) was in a Washington K-14 school district. The AFT, representing all K-14 school district instructional staff, bargained a contract which was essentially a three-page salary schedule. By comparison, the 1975 Olympic College contract is thirty pages and contains a salary schedule plus extensive provisions regarding fringe benefits, work day definitions, management rights, and grievances, to name just a few. An Olympic College spokesman, who has witnessed the trend toward spelling-out everything in the contract, said, "we have gotten to the point of dotting the I's and crossing the T's."

Since the on-set of collective bargaining at Olympic College, faculty salaries have risen above the K-12 brackets (with a few exceptions), workloads have decreased, and faculty have a greater voice in governance. Economic gains are still important goals for the NEA local (which replaced the AFT) but, with the lessened chances for dramatic gains in salaries and fringes, governance issues will probably be of primary interest at the next round of negotiations.

D. Michigan

Michigan had a somewhat similar experience. The Michigan collective bargaining law was passed in 1965. Thirty-one of 37 public two-year institutions now have contracts with their faculties.

Because of a statewide K-14 system and a tradition of industrial unionism in some areas, Michigan also had some collective bargaining before the law was passed. At least one school, Henry Ford Community College, had been bargaining with its faculty for over a decade before 1965. The school is located in Dearborn, which has a long history of industrial unionism. The AFT local is strong and one Michigan administrator believes it to be an example of militant industrial unionism applied to higher education because it has taken on some of the attributes of the Dearborn automotive unions.

The faculty at Henry Ford Community College had a strong voice in governing the college prior to enactment of the 1965 collective bargaining law, and it still does. Faculty salaries have been among the highest in the mid-west for a long time. Perhaps the greatest gain, if any, that might be attributed to collective bargaining under the 1965 law is an increase in fringe benefits, which are valued at $3,000 to $4,000 a year per faculty member.

Of recent interest to the faculty union at Henry Ford Community College is the issue of job security. Faculty members fear a group of powerful external forcess--governmental and social--which threaten their job security. Examples are decreased funding, centralized control of policy, affirmative action requirements and reduced federal grants. With retrenchment becoming less a spectre and more a reality, faculty members are seeking methods whereby they can secure their jobs through the collective bargaining process. Thus, seniority rights are a major topic in negotiating now taking place.

II. RECENT DEVELOPMENTS

Though issues vary from state to state and depend upon a complex weave of economic, social and experiental factors, four issues perplex many boards of trustees.

A. Scope of Bargaining
B. Grievance and Arbitration Procedures
C. Management Rights Clauses
D. Retrenchment Procedures

A. Scope of Bargaining

If any issue is important today, it is scope of bargaining. Which issues are mandatory (must be bargained), permissive (may be bargained), or prohibited (may not be bargained) subjects of bargaining? At one time many issues were thought to be beyond the scope of bargaining and/or were ignored. However, as collective bargaining activity increased, so did the scope of bargaining. For instance, the Academic Collective Bargaining Information Service has identified 132 scope of bargaining issues in only 14 states. Many of those issues are mandatory subjects of bargaining. Only a handful are prohibited subjects of bargaining in some states.

One recent and interesting scope of bargaining decision from the New Jersey Public Employment Relations Commission involves, among other issues, the question of Rutgers University's right to discuss with the faculty senate or other university body, issues other than grievances and terms and conditions of employment. The New Jersey PERC concluded:

> "As viewed by the Commission, therefore, there is no reason why the system of collegiality and collective negotiations may not function harmoniously. Neither system need impose upon the other, with one exception: terms and conditions of employment including grievances. The University is free to continue to delegate to collegial entities whatever managerial functions it chooses, subject of course, to applicable law."

The decision, a landmark in New Jersey, asserted the following to be mandatory subjects of bargaining:

1. Procedures to be followed in the selection of department chairmen.

2. Scope of tenure.

3. Aspects of affirmative action plans relating to, or impacting upon, terms and conditions of employment.

4. Implementation of the academic calendar as it impacts upon terms and conditions of employment.

5. Hours, compensation and working conditions of teaching assistants and graduate assistants.

Thus, the University, which asked PERC to determine the above scope of bargaining issues and others, tested the limits of collective bargaining in New Jersey.

Another thorny scope of bargaining problem involves the extent to which the faculty may become involved with decisions affecting institutional resources. Because many counties have cut back their budgets, board members are faced with the perplexing problem of reallocation of resources. Thus, faculty members, whose jobs hang in the balance, are demanding a voice in deciding these traditionally management concerns. To what extent must the board bargain with the faculty union over a board decision to cut the budget? New York State, for example, recognizes the employer's right to cut the budget, but requires the employer to negotiate the impact of that cut on salaries, workload, etc.

Generally, boards have shown empathy for faculty concern over retrenchment. In a few instances in which boards have ordered retrenchment, such orders have been rescinded after faculty members convinced the boards that money could be saved in other ways. This happened in New Jersey and Pennsylvania in the 1975-76 academic year.

B. Grievance and Arbitration Procedures

Early collective bargaining agreements rarely contained sophisticated grievance procudures. This may have resulted from the fact that little attention was paid to the grievance process during early collective negotiations. Unions were concerned principally with economic issues (salaries, fringes, etc.) and not with institutional governance. Those grievance procedures that were included in early contracts were often anachronisms carried over intact from pre-collective bargaining campus by-laws and/or faculty handbooks. The procedures tended to be either informal (such as a 2 step process commencing with the dean and ending with the campus president) or complex (such as a 7 step process beginning with the department chairman and ending with the board of trustees). The former was recognized for its swiftness in handling grievances, and with it, an occasional denial of due process. The latter provided a protracted review process, with no apparent likelihood of a just result. As unions expanded their influence in higher education, they turned their attention to non-economic matters. The grievance process came to be recognized as "a vehicle by which meaning and context is given to the collective bargaining agreement." Thus, many of today's grievance procedures are designed to produce swift and efficient handling of grievances (usually 3 or 4 steps) while the range of grievable subjects has been circumscribed

Perhaps one of the most significant developments in this area has been the increased acceptance of binding arbitration as the capstone to grievance procedures. An initial faculty aversion for what was felt to be the "heart of the system of industrial self-government" has flowered into acceptance for several reasons:

1. Faculty members learned that they could win in arbitration that which they could not win in negotiation.

2. The authority for resolving disputed personnel decisions is taken from the board of trustees and placed in the hands of a neutral -- the arbitrator.

3. Arbitration was the only means available to faculty members for resolving grievances.

Because of the heavy volume of grievances, board members have become sensitive to the ways in which contract language can cause personnel problems for the college. One 1975 CUNY arbitration case, though atypical, is instructive. An arbitrator's decision upholding a faculty member's griev-and granting him tenure, was appealed to the courts by the college and finally reached the state's highest court. Though the court emasculated the arbitrator's decision, the subsequent contract had a lengthy new clause which eliminated the arbitrator's right to promote, appoint, reappoint, or grant tenure. An "in house" arbitration procedure was adopted in place of the arbitrator's right to arbitrate those personnel decisions. The contract revisions virtually assured the trustees that future arbitration rulings on tenure, promotion, etc., would not be contrary to the provisions of the contract.

As they CUNY example indicates, the important issues being arbitrated today are personnel issues--such as failure to promote or grant tenure. Because these decisions adversely affect a faculty member's economic and/or career status, they are more likely to be grieved--sometimes with little regard for the merits of the case. A recent study of CUNY and SUNY grievances by June Weisberger concluded that about 59 percent of all grievances in those institutions were for denial of tenure. But most contracts, including the SUNY and CUNY contracts, provide that personnel decisions are grievable or arbitrable only if a procedural error has been made. Putative substantive errors are neither grievable nor arbitrable. However, the fine and fuzzy line between substance and procedure is often difficult to discern, and the grievant hopes that someone will agree that a procedural and not a substantive error has been made.

Despite some deleterious effects, grievance processes are essential for good employee relations. They tend to keep personnel decisions out of the courts, and, to a lesser degree, from arbitration. They also give the appearance of objectivity and due process which helps to reduce the number and effects of personnel controversies.

C. Management Rights Clauses

As trustee negotiating teams developed more expertise in collective bargaining they realized that there were many problems which the union proposals failed to address or addressed in an unsatisfactory manner. Consequently, management bargaining teams started coming to the bargaining table with their own demands. One of them is the management rights clause. Though early clauses were amorphous assertions of "traditional management rights," the tendency of late is to list in the negotiated contract those rights which the board wishes to reserve for itself. One danger inherent in such a list is that the union might interpret the list as a definitive one and declare that anything not listed must be negotiated. Another popular, and fairly recent approach is management rights legislation, usually included in a collective bargaining law. Twelve states use this approach. Among them is Wisconsin with a short, and somewhat ambiguous statement:

> "Nothing in this act shall be construed to interfere with the responsibilities and rights of the employer as specified by federal and state law, including the employer's responsibilities to students, the public, and other constituent elements of the institution."

and Iowa with a rather full list rights:

> "Public employers shall have, in addition to all powers, duties, and rights established by constitutional provision, statute, ordinance, charter, or special act, the exclusive power, duty and right to:
>
> 1. Direct the work of its public employees.
>
> 2. Hire, promote, demote, transfer, assign, and retain public employees in positions within the public agency.

3. Suspend or discharge public employees for proper cause.

4. Maintain the efficiency of governmental operations.

5. Relieve public employees from duties because of lack of work or for other legitimate reasons.

6. Determine and implement methods, means, assignments and personnel by which the public employer's operations are to be covered.

7. Take such actions as may be necessary to carry out the mission if the public employer.

8. Initiate, prepare, certify, and administer its budget.

9. Exercise all powers and duties granted to the public employer by law."

This sort of legislation is considered by many trustees to be helpful, especially in states that do not have statewide bargaining, because it reduces union "whip-sawing" on issues.

Typically, a management rights clause will preserve the board's exclusive authority, except insofar as other contract clauses modify that authority, to promote, grant tenure, appoint, etc. The following are the most uniformly mentioned management rights:

--Determine institutional programs
--Determine level of funding
--Hire, fire and promote
--Supervise employees
--Assign jobs
--Determine conditions of employment for non-union members
— Organize resources
--Determine size of workforce
--Determine standards of service
--Determine standards of recruitment

Why are management rights clauses becoming a part of more agreements? Such clauses tend to reduce the number of grievances because as local faculty leaders become more sophisticated in employment relations, they are less willing to support grievances that will be denied because the decision grieved is within the management rights clause. The clause also has a strong psychological effect, since it draws a we-they distinction which many administrators and unions foster. Management rights clauses are the result of a new kind of bargaining in higher education--the board comes to negotiations with its own set of demands. In the quid pro quo process that often follows, the board bargains sufficient authority to allow it to flexibly meet its statutory mandate.

D. Retrenchment Procedures

Many two-year colleges still do not have retrenchment clauses in their contracts. Because of the spectacular growth of community colleges in the last decade, few people thought such clauses necessary prior to 1975. However, the trend in recently negotiated contracts is to include some statement regarding retrenchment. Usually the clause states that faculty layoffs must be in inverse order of seniority (some contracts make adjustments for program quality), or, in a few contracts, such decisions are reserved to the board in a management rights clause. An example of the former is the SUNY contract; the latter, the Community College of Baltimore contract. Between the extremes are a wide range of "consultation" procedures. Few retrenchment procedures provide that faculty layoffs be made on a merit basis. The Board of Trustees of the California State University and Colleges, as an example, is reconsidering a proposal to make merit the primary criterion for establishing lay-off policies for faculty members. The proposal, adopted at a trustees meeting in January, was sharply attacked by faculty groups within the system.

Faculty have proven quite adept at pursuading board members and politicians that when the axe falls it should fall elsewhere. In recent months a faculty union in Pennsylvania avoided lay-offs be agreeing to cutbacks in funds for salary increases, research and travel. In the spring of 1976, layoffs of 250 faculty members in New Jersey state colleges were avoided by contract negotiations. The union had voted to strike, but the governor's office interceded to avoid further impasse.

Although many community colleges have what appears to be an adjustable "cushion" in their part-time faculty, such may not be the case. Part-time faculty often teach the most popular vocational courses. For instance, a community college adjacent to a large metropolitan airport might offer courses in avionics taught entirely by electronic technicians from the airport. A cutback in part-time avionics faculty could result in a heavy decline in enrollment, without a corresponding enrollment increase in other courses If the collective bargaining agreement covers only full-time faculty who negotiate a contract requiring part-time faculty to be laid off before full-timers, the board may find that it cannot meet the community's education needs when its budget is severely reduced. For these reasons, institutional goals and commitments are being carefully assessed at the time the contract is bargained so that embarrassing and expensive personnel problems may be avoided.

III. THE FUTURE

A. Students and Collective Bargaining

Some observers believe there is little likelihood that students will watch collective bargaining from the sidelines much longer. Students participate in faculty/administration collective bargaining in Maine, Oregon and Montana. The New York and Florida legislatures are considering bills providing for student participation.

Student leaders say they are most concerned about faculty strikes, increased tuition costs, the quality of teaching and their continued participation in governance. To the extent that faculty and students' interests continue to diverge, students may demand greater influence at the bargaining table. Although it is difficult to believe that tri-partite bargaining will become a reality in the near future, as more students gain rights at the bargaining table, some form of third party pressure on what has been a two-party process seems likely.

B. Federal Collective Bargaining Bill

Before the recent release of an important Supreme Court decision, some observers thought Congress would pass one of two pending bills that would allow public employee collective bargaining nationwide. The two bills are:

1. H.R. 77, introduced by Congressman Thompson of New Jersey, which would permit public employees to organize and bargain by striking out the exemption for states and political subdivisions in the National Labor Relations Act (29 USC 152 [2]).
2. H.R. 1488, introduced by Congressman Roybal of California. The comprehensive Roybal Bill is entitled a National Public Employee Relations Act, and provides, among other things, for the right to strike by public employees.

However, Edward Kelley, Jr., Associate Director of ACBIS, has analyzed the recently released Supreme Court decision, The National League of Cities et al v. Usery, 44 Law Week 4974, and he concluded that the federal collective bargaining bills, as proposed, are outside the constitutional authority of Congress.

The issue addressed by the case was whether certain amendments to the Fair Labor Standards Act, setting minimum wages, were constitutionally permissable exercises of Congressional authority. The court held:

> "...that insofar as the challenged amendments operate to directly displace the state's freedom to structure integral operation in areas of traditional governmental functions they are not within the authority granted Congress by [the commerce clause]."
>
> and
>
> "If Congress may withdraw from the states the authority to make those fundamental employment decisions upon which their systems for performance of those functions must rest, we think there would be little left of the states' 'separate and independent' existence." (emphasis added)

Though it is impossible to know what the Congress will do with the Roybal and Thompson bills in light of The National League of Cities et al v. Usery, it is clear that if either bill is enacted, it will be quickly tested in the federal courts.

C. Affirmative Action

How to correct past and present discrimination in faculty employment is a serious problem for the board of trustess. Inconsistent court decisions, the increased number of "reverse discrimination" grievances and the paucity of qualified candidates among minorities and women in some parts of the country have exacerbated this problem. Nevertheless, boards and unions are obligated to continue to seek imaginative solutions to what may prove to be an all but insolvable problem.

One example of the double-edged aspects of affirmative action requirements is a recent Virginia case (Cramer v. Virginia Commonwealth University, 660 GERR F-1, 1976), in which the university had refused to consider a qualified white male applicant (Cramer) for a teaching position, but considered only women. The court, in striking down the school's affirmative action plan, held:

> "...where the only difference between two persons competing for the same job is a difference in sex, then the Equal Protection Clause requires that they not be treated differently on account of the fact that one is male and the other female."

Though such decisions indicate that "reverse discrimination" is unconstitutional, many boards wonder how their presidents are going to meet the needs of minorities, women, and the 1964 Civil Rights Act and its amendments, without discriminating against others at the same time.

*FOOTNOTE

The Academic Collective Bargaining Information Service was formed in 1973 to gather and disseminate information and provide research and consultation on academic collective bargaining. ACBIS cannot, however, do research necessary for a thorough "history" of collective bargaining in higher education. This paper is primarily a synthesis of the available research and numerous interviews. Few scholarly histories of community college collective bargaining exist. No one, to our knowledge, has yet published a "history" of collective bargaining in community colleges among the several states. The author wishes to acknowledge the able research and editorial assistance of Robert Rodriguez.

COLLECTIVE BARGAINING AND COMMUNITY COLLEGES

by
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Statistics point to the fact that almost three times as many community colleges have faculties which have organized for collective bargaining as do four-year institutions. A warning to this effect was sounded in 1967 in a report by a Task Force on Faculty Representation and Academic Negotiations of the American Association for Higher Education. It stated that the greatest discontent and most visible tendencies toward unionization were to be found at the two-year level and gave as the reason, faculty dissatisfaction with the complete control by the administration of curricular and promotions and the rigid application of the rules governing the conduct of professional duties. More recently, research which has been conducted into the reasons for the more ready acceptance of unionization by two-year institution faculties apparently supports the 1967 report.

The extension to government workers, among them college faculties, of the right to organize for collective bargaining appears to be the most important single reason for the growth of academic unions. However, faculty members from two-year institutions in Michigan and New York in an interview study gave as their reasons for organizing: low salaries; unilateral decisions by trustees and administrators; lack of communication between administration and faculty; and a general feeling of being treated as high school teachers rather than as members of a college faculty.

The contract demands made upon the administrators and trustees by these academic unions is a further reflection of their reasons for organizing: distribution of salary increases and the administration of salary schedules; allocation of money in the nonsalary portions of the budget; economic fringe benefits; determination of the make-up of the bargaining unit; control over promotions; control over non-renewal or the granting of tenure; and work schedules. Further, and possibly most resisted is the demand for binding arbitration of the misapplication of the agreement and any other "grievance" conceived by the academician.

To prepare themselves for facing these demands boards of trustees must first determine the collective bargaining philosophy of the institution and second, who should function as chief spokesman and negotiator for the board. These decisions are of primary importance. Unfortunately, the need for the first is little understood and the common belief is that anybody -- or some specific title -- can do the second. As a consequence, there are created unnecessary obstacles to establishing and achieving priorities.

What are the issues involved in determining a collective bargaining philosophy? One is the matter of determination of who is the boss -- the board, a local or county body of politicians, the executive branch of the state government or the state legislature. Next, is the need to resolve the question of attitude towards the academic union. Should it be one of strong opposition -- skirting or performing any variety of unfair labor practices? Should it be a more guarded opposition? Should it be an extreme opposite position involving capitulation with administrators becoming clerical functionaries responsible to the faculty?

If the board of trustees is not the ultimate employer, it must establish communication with those with whom it must then consult. This article, however, will assume the board functions as the employer. If so, what must it consider in determining a collective bargaining philosophy?

Since collective bargaining usually begins with the board owning and controlling the whole ball of wax: the union demands a share consisting of money, protection in the form of controlling decision-making affecting all aspects of individual relationships with the employer, and finally, various forms of union protection ranging from the union shop to a dues checkoff.

The board must determine its attitude in responding to these demands. A most serious error is to underestimate the seriousness, militancy and objectives of the union. Further, the board usually cannot say -- and make it stick -- "We will give them nothing." Consequently, it boils down to determining how far will the board go in granting the demands made in these areas.

Although it never seems so to the direct participants, money is the easiest item to negotiate and agree upon. It is solid and concrete. The board has access to only "X" amount of dollars and this circumscribes what can be done. The allocation of these "X" amount of dollars must retain and secure new faculty, effective administrators, and a student body -- as well as providing all necessary supplies, maintenance and security services, utilities, and equipment.

What then of the demands other than money -- those pertaining to decision-making on matters of hiring, firing, non-renewal, granting of tenure, promoting, and assigning work loads? Decision-making in matters of curriculum, departmental development, numbers of students? First, of course, the board must determine those matters upon which by law, it must make the final judgement. If it now delegates that judgement to administrators, does it desire to continue that practice? Can or should the faculty have input in this area of decision-making? Should the faculty make the final decision?

It is not sufficient to anwer "yes" or "no" or even "never!" What must be clearly established by the board and the administration is the specific managerial model to be used in that specific institution. Only when the model is thoroughly understood can a negotiator take each demand, weigh and measure it and create the possible options. To any specific demand there are limitless options -- and this limitless concept can only be controlled by the managerial model. The lack of definite, clear-cut collective bargaining philosophy results in ambiguous contract language, erratic shifting of approach to negotiations by the board negotiating team, and frequent lack of administrative direction.

Selecting the negotiator involves consideration of many personal factors. A negotiator must be flexible, unflappable, knowledgeable of labor law, adept at acquiring a feeling for the atmosphere of the institution -- and hopefully, well experienced. It is unimportant by which title he is known; whether it be president, attorney, consultant, trustee or director. Common sense dictates that the president should not be the chief negotiator nor is it wise that it be a trustee. The common mistake is to utilize an individual because of his title as opposed to selecting the individual with the proper personal attributes and negotiating experience.

Once the institution's managerial model is established and a proper individual selected to head the negotiating team, other matters more easily fall into place. The board of trustees, aided by the administration, establishes parameters for the negotiating team. Systems of internal and external communications are devised and a strike plan is prepared. Negotiations take place and can now be utilized to improve board-administration-faculty relationships and understandings.

COMPULSORY UNIONISM: A REAL AND PRESENT DANGER

by

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The unionization of college and university faculties is a phenomenon which educators have reason to view with a certain degree of alarm.

Though many academics will argue that professional excellence is inhibited by union collectivism, unionism itself is not the spectre which frightens me. A union, after all, implies only a bond of common interest, much the same bond that has led to the rise of all kinds of faculty associations in the past. Who, indeed, opposes the faculty senate as we know it?

Unionism becomes inappropriate, however, when unions fall into the hands of radicalized individuals who are professional trade unionists first and educators second, whose jobs (right or wrongly) depend on their degree of militancy and the amount of control they are able to expropriate from the administration and use to keep the faculty in step.

The bogeyman is not unionism, but the closed shop type of unionism which has, in the industrial sector, given union professionals a virtual stranglehold on the job market in certain industries and political muscle far out of proportion with the numbers of individuals they claim to represent (fewer than 25 million out of a total labor force of some 85 million).

For the administrator, as well as the individual educator, it is an issue of great importance, which ultimately will affect not only the financial stability of many institutions, but the very bedrock of learning, academic freedom. For it is the individual educator, the teacher, who pays the dearest price when his or her career is made to depend upon financial obligation to a trade union, rather than professional competence and, hopefully, excellence.

Let's look at the federal labor law, as it has been copied by many states, and as it applies to private colleges and universities.

Federal labor policy is spelled out in the National Labor Relations Act (Wagner Act) of 1935. That law, and its 1947 Taft-Hartley Act amendments, gives individual employees the right to join or refrain from joining unions "except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment..."

The federal government now interprets that law to apply to all non-public institutions. Most states, however, have similar laws affecting public and community colleges and universities.

The foundation of the NLRA and its state models is the element of legally sanctioned coercion.

"Public policy concerning labor unions has, in little more than a century, moved from one extreme to the other, " writes 1974 Nobel Prize winning economist F. A. Hayek. "From a state in which little the unions could do was legal if they were not prohibited altogether, we have now reached a state where they have become uniqely privileged institutions to which the general rules of law do not apply. They have become the only important instance in which government signally fail in their prime function - the prevention of coercion and violence."

"...It cannot be stressed enough that the coercion which unions have been permitted to exercise contrary to all principles of freedom under the law is primarily the coercion of fellow workers. Whatever true coercive power unions may be able to wield over employers is a consequence of this primary power of coercing other workers."

Professor Hayek maintains that "It is the techniques of coercion that unions have developed for the purpose of making membership in effect compulsory, what they call their 'organization activities' (or, in the United States, 'union security' -- a curious euphemism) that gives them real power. Because the power of truly voluntary unions will be restricted to what are common interests of all workers, they have come to direct their chief efforts to the forcing of dissenters to obey their will. They could never have been successful in this without the support of a misguided public opinion and the active aid of government."

There is no doubt that the NLRA and most public sector "bargaining" laws are just as well-intentioned as they are faulty. The main fault, as Professor Hayek noted, is the fact that union professionals are given the extra-legal power to force their will on unwilling, in fact forced, members.

That employers, or in this case college administrators, are also compelled to deal with these coercive counteragents, merely compounds the problem.

Reed Larson, president of the 350,000 member National Right to Work Committee, is well-known combatant of union coercion.

While generous in his praise for the high ideals of trade unionism, Larson is openly critical of union professionals, whom he usually refers to as "union bosses," and is tenacious in his belief that unionism should be voluntary, rather than compulsory.

Larson says that Congress never set about to create an even-handed labor policy. "The public was led to the conclusion that, due to concentration of power in the business and industrial community, some counterbalancing force was needed on the side of organized labor. No serious effort was made, to my knowledge, to identify areas in which special privileges extended to industry by government had created this imbalance. Instead of seeking solutions which would diffuse government-protected concentrations of industry power and which would enhance individual freedom, our country decided to create a new monopoly power to offset what was interpreted as excessive power in the hand of business."

"This policy did not even profess to be even-handed in balancing the rights of non-union employees and employers against the rights of the union. The policy was openly designed to tip the balance in favor of the union organizer. Several attempts were made in an effort to implement this policy in law -- the Norris-LaGuardia Act, the National Industrial Recovery Act, and others. Finally, in 1935, with the passage of the Wagner Act, the basic labor policy which continues in this country today was established. That law -- the National Labor Relations Act -- extended vast new powers and privileges to the organizers of labor unions -- power and privileges which were given at the expense of individual employees and employers."

The two cornerstones of that policy are exclusive representation and compulsory unionism. Exclusive representation, a privilege avidly sought and defended by union officials, is an arrangement which confers on a labor union the sovereign power of government -- a power extended to no other private organization in our society. It provides that, when a union achieves the support of an alleged "majority" of the employees in a bargaining unit, it thereby gains sovereignty, insofar as wages, hours, and working conditions are concerned, over all employees, including those who do not wish to be represented by the union. Exclusive representation compels the employee, who may have been on the job years before the union came along, to accept that union as his exclusive agent in dealing with his employer. Compulsory unionism, moreover, gives union officials the sovereign power to tax -- to compel a worker who doesn't wish to be represented by that union to buy from the union agent the privilege of keeping his job.

Though infrequent until recently, compulsory unionism pacts are now becoming disturbingly commonplace in higher education, both at the junior college and university level. More than a dozen states -- Alaska, California, Connecticut, Hawaii, Maine, Massachusetts, Michigan, Minnesota, Montana, Oregon, Rhode Island, Vermont, Washington, and Wisconsin -- have laws which permit or require compulsory unionism for educators employed in public institutions. In Hawaii and Rhode Island, educators must support unions as a matter of law. In most of the other states the laws are "permissive," meaning that the employment rights of educators are negotiable, and often are used a bargaining chips during contract talks. The state of Maine, interestingly, has a law authorizing involuntary unionism only among employees of the state university system.

Meanwhile, a number of private colleges and universities also have faced up to the challenge of faculty unionization by bowing to demands by union agents that all teaching professionals be required to pay union dues in order to keep their jobs. These include the University of Birdgeport, Bryant College, and effective this fall, the Antioch School of Law.

Counting both public and private institutions, according to THE CHRONICLE OF HIGHER EDUCATION, some 20 institutions now have compulsory unionism arrangements of one sort or another (usually the compulsory "agency shop," in which the academic is required to pay union fees and dues in lieu of having to belong to an unwanted union).

In Minnesota, a statewide closed shop-type arrangement covers the entire community college system. In Michigan, where state law also permits forced unionism in the public sector, several colleges have bowed to union demands to impose compulsory unionism on their faculties, including Central Michigan University and Ferris State College. Other colleges and universities where compulsory unionism is now the rule, rather than the exception, are Milwaukee Area Technical College, Rider College, Detroit College of Business and New York Institute of Technology.

The arguments against compulsory unionism are philosophical, as well as practical. As a practical matter, compulsory unionization inevitably undercuts faculty morale, by creating a situation in which those who oppose unionization are subject to harrassment and sometimes open hostility from the more militant advocates of universal unionization.

Compulsory unionism also increases the power of the union hierarchy, makes union officials less responsive to the membership, and, accordingly, much tougher for administrators to reason with.

Thus, by causing the entrenchment of union activists in key union positions, the "union shop" and "agency shop" promote the kind of hard-headed attitude that is difficult, if not impossible, to deal with; bringing to the fore the type of individual dedicated to trade union, rather than academic goals, or as Larson calls the, professional "union bosses."

Philosophically, the arguments against compulsory unionism are equally compelling.

Dr. Russell Kirk, editor of The University Bookman, and author of several works on educational philosophy, including Academic Freedom: an Essay in Definition, and The Intemperate Professor and Other Cultural Splenetics argues thusly:

> "I am concerned today with the challenging work of the intellect, the most rewarding of all kinds of work. My picipal point is this: even the right to intellectural work is insecure nowadays. What we call 'academic freedom' is, in essence, a protection of the right to work with one's mind. The doctrime of academic freedom maintains that the teacher and the scholar should be reasonably free to teach an pursue the truth. Sometimes the truth is unpopular; therefore we endeavor to secure teacher and scholar against arbitrary interference with their work."
>
> "In theory, the 'professor' is a person who strongly professes his belief in certain truths. Unless he is reasonably free to pursue and expound those truths, he cannot accomplish his work. Thus academic freedom is a natural right: I mean that it arises from the nature of intellectual labor."

Compulsory unionism, he feels, subverts this freedom by making educators subservient, as far as their employment rights are concerned, to union professionals.

"So I come full cycle, back to academic freedom -- which is freedom from ideology, freedom from obsessive political activism, freedom from centralized power over the intellect, freedom to teach and study and think. If any class of people ought to be able to bargain for themselves as individuals, or to advance their common interest through genuine professional associations, those people are the professors and teachers. If we deny freedom of choice to such people, there will be precious little libery left for anybody in our society, within a few years or decades. Being treated as if he were one of an unthinking herd, incompetent to make his own decisions, is the ultimate insult to a man of learning."

Kirk, an identifiable "conservative" educator, is not alone. His views and concerns are shared and echoed by educators of every partisan and political stripe, from the far-left and the far-right.

In Minnesota, for example, a group of mostly "liberal" teachers in the state's community college system are so opposed to compulsory unionism, and so convinced that academic freedom cannot survive when unionism is forced upon them, that they are challenging the very bedrock of union privilege -- the granting of monopoly bargaining status to certificated unions. A federal appeals court has agreed with the teachers that forcing them to accept the representation of an unwanted union raises a "substantial federal constitutional question," and has ordered a three judge court to hear the case. Undoubtedly, the question will land in the lap of the U.S. Supreme Court.

Already in the Supreme Court's hands is a similar case involving 600 Detroit public school teachers who feel that city officials and officials of the local union are violating their constitutional rights by forcing them to pay money to the union in order to work for their own government. This case is on the high court's fall calendar.

The little organized resistance to compulsory unionism that now exists in higher education is rooted firmly in belief among educators that the learning experience, to be meaningful, must be conducted in an atmosphere of freedom.

Rabbi Dr. Jakob J. Petuchowski, research professor of Jewish theology and liturgy at Hebrew Union College, Cincinnati -- one of the leading figures in Concerned Educators Against Forced Unionism -- maintains the absolute inviolability of teaching as a "truly free profession."

But, he warns, it will be free no longer if compulsory unionism is allowed to make teachers subservient to union officials who hold the key to their employment rights.

"Indeed, some of our better brains, considering teaching a profession, may think twice before embarking on a teaching career if such a career would represent a barrier to their academic and personal freedom."

Says Leon Knight, one of the plaintiffs in the Minnesota community college case: "...there's an area where conservatism -- true conservatism -- and true liberalism come together, and that's the point where it comes to individual freedom."

"Now in education and particularly higher education ... the idea of academic freedom, the idea of the dissident person, the idea of the person who marches to a different dum, is very precious. And yet unionism is coming in and saying I must march to that drum."

Knight doesn't claim union organizers actually try to interfere in the Classroom. The problem is more subtle, and more serious.

"They don't come and mess with me very much. But if they can determine, not what I teach in the classroom, but whether I teach at all, that is the ultimate threat to academic freedom."

Says Hayek, "The essential requirement is that true freedom of association be assured and that coercion be treated as equally illegitimate whether employed for or against organization, by the employer or by the employees. The principle that the end does not justify the means and that the aims of the unions do not justify their exemption from the general rules of law should be strictly applied."

Bargaining chip or not, those who believe in freedom -- more important, those who believe in education -- must resist.

ESTABLISHING THE REPRESENTATION UNIT FOR NEGOTIATIONS

by
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Throughout the United States more and more community colleges have found themselves in bargaining, negotiating or meet and confer relationships. In some cases local laws have forced bargaining on them and their employees. In many cases though management has slipped into bargaining through a series of more and more formal relationships with their employee organizations. Unfortunately, in neither case do most trustees take the chance to step back for a minute and look at what they and the college administration are doing.

In looking at collective bargaining, college trustees and administrators usually focus on such things as strikes, collective bargaining contracts, union shop clauses and other aspects of the process. One aspect they typically ignore, is the placement of various employee classifications into different bargaining units. The determination of the appropriate unit for recognition may be the single most important decision that management makes in the bargaining process. As an example, one mid-western community college, in a heavily unionized area, on the advice of its business manager, cut up its non-academic staff into seven different units: custodial, grounds, food service, clerical, maintenance, building trades and transportation. For two years the business manager played the units off against each other but then the local employee association went defunct and each of the units was raided by a different AFL-CIO union. Then the business manager tried to consolidate the units into one large unit. Unfortunately, based on the bargaining history of two years he lost the case. Within a matter of months the unions were working together and instead of one weak association management was dealing with seven militant unions that were whipsawing management. If the college had stepped back and looked at where they were going, they would have realized that they would be raided and would have gone for one unit. Instead they are stuck with an impossible labor relations problem that will take years to correct.

Before the Board of Trustees recognizes a union or association it should take a close look at the classifications the organization is asking to represent and decide whether it is to management's advantage to agree to that grouping or not. If not, management should refuse recognition. In making its analysis the Board should consider the following general principles:

Establish As Few Units As Possible

In deciding on the appropriate unit, management is usually torn between two strategies. In one strategy, management attempts to divide its employee classifications up into as many units as possible in an effort to divide their employee organizations and keep them from becoming militant. In the second strategy, management tries to get the largest possible units to cut down on the number of negotiations and to keep from being whipsawed by different organizations.

In making a decision, the trustees should consider that any unit they established today will probably be in existence ten to fifteen years from now. In general, that means that it is better to go for the fewest possible units to cut down on the number of negotiations and the possibility of whipsawing.

Don't Be Pressured Into Recognition

Unions often organize colleges by signing up a number of employees and then threatening to go on strike if management won't recognize them immediately. Nothing requires college trustees to recognize a union on their terms. Once established, representation units tend to become cast in concrete. Even in the private sector companies have the right to refuse recognition unless the organization requests an appropriate unit and demonstrates its majority support in a secret ballot election.

The college would be better off taking a strike in the face of a demand for an inappropriate unit than giving in and spending the next five to ten years living with the consequences.

Exclude Managerial And Confidential Employees

If the Board of Trustees is going to function effectively in the labor relations process it must have an effective group of administrators, that it can rely on for labor relations advice and support. In negotiations the district's chief negotiator needs sound advice on the employee organization's proposals. In an impasse the district needs administrative support in mediation and fact-finding procedures. In court suits, the college attorney needs witnesses to support the trustees' case. And in strikes, the college needs a cadre of managers who can keep the college functioning until the strike ends.

It is an unfair and untenable position for the trustees to demand loyalty from an employee against the employee organization that represents him. A college administrator shouldn't have to fight a union that is demanding higher wages for him or cross a picket line set up by his fellow association members. In private sector colleges and universities and in most states that have bargaining laws it is desirable to exclude those employees from representation by any organization. The usual test is to exclude any employees who recommend hiring, or termination, or discipline, or promotion, or adjust grievances or who evaluate other employees.

Similarly, most labor relations boards exclude those people who are privy to confidential information about labor relations matters. In the County of Genesee and Genesee Community College, 7 PERB 4044 (1974), the New York Public Employee Relations Board excluded the Director of Data Processing and the Directors of Placement and Community Relations from the bargaining unit since they were "privy to labor management relations information which, because of its significance to the basic mission of the employer, was not intended for the eyes or ears of rank and file personnel or their negotiating representative".

Before agreeing to any representation unit, the trustees should carefully review their administrative and clerical positions to determine which of them should be kept on the "Management Team".

Exclude Casual Employees

In every district there are employees who come in on an on-call basis to work as substitutes or for special projects. Employee organizations usually want to represent these people to get their dues and to control them in the event of a strike. In reality, however, they have no community of interest with the regular employees and should be excluded.

Establish An Employee Relations Procedure

The best way to eliminate recognition problems is to establish a system for dealing with recognition demands before the first one comes in. One western college had been dealing with a local organization of blue collar employees for several years. Based on their informal relationship, there were no signed agreements, recognition units or formal rules and regulations. During negotiations one year a rump group sprang up and brought in an outside union. The union got signatures from the warehousemen and bus drivers and recognition in a transportation and warehouse unit. Suddenly in the middle of negotiations, the trustees were faced with two organizations both claiming to represent the same employees and with a strike threat from the union if they didn't get recognition. Fortunately, they held the line and after the union lost a court suit, it went away. It would have been easier, however, for the college to have established a blue collar unit years before and put in formal procedures for any organization wishing to challenge that unit.

Every Board of Trustees that expects any type of organizational activity should adopt a policy which (1) establishes the broadest possible units, (2) excludes management and confidential employees (within the limits of state law), (3) excludes casual employees, (4) establishes cutoff dates prior to negotiations for claims by outside unions for recognition, (5) establishes procedures for challenges to the appropriateness of units and (6) provides that while an agreement is in effect no challenge can be made to the representation unit or to the organization which represents the unit (contract bar).

Legal Problems

Where there are no state collective bargaining laws, most representation unit problems can be avoided by strong board rules and regulations. In many states, local control has been superseded by state collective bargaining laws. In those states there are a number of issues which are repeatedly litigated.

A. The exclusion of department heads from the faculty unit.

B. The placement of non-teaching professional employees (i.e., coaches, librarians).

C. The placement of part-time faculty.

The Exclusion of Department Heads

In private colleges and universities the National Labor Relations Board (NLRB) has looked to each individual fact situation in determining whether department chairpersons should be included in the faculty unit or excluded from the unit as supervisors.

For example, in Fordham University, 193 NLRB No. 23, 78 LRRM 1177 (1971) the NLRB included the department chairpersons in a faculty unit, finding that they were not supervisors since:

a. Decisions as to appointment, promotion, and tenure of faculty members in each department were made not by the chairpersons alone, but my the faculty of the department as a group, and to the extent that the chairpersons' recommendations concerning these matters were given more weight than those of other faculty members; this fact appeared to reflect the chairpersons' superior knowledge and experience and did not indicate possession of the type of authority contemplated in the statutory definition of supervisor.

b. While the chairpersons prepared the budget for their department, they did so only with the advice and consent of other faculty members in their department.

c. The chairpersons had no power to effectively recommend salary increases.

d. There was no showing that the chairpersons made final selections in hiring their secretary or had the authority to discharge or effectively recommend the discharge of a secretary.

e. The chairpersons considered themselves and were considered by the faculty members to be representatives of the faculty rather than of the administration and there was some indication that the university viewed them similarly.

In Fairleigh Dickinson University, 205 NLRB No. 101, 84 LRRM 1033 (1973), the NLRB found that the department chairpersons were supervisors and should be excluded from the faculty unit since:

a. Department chairpersons exercised authority to make effective recommendations as to hiring and changing the status of faculty members.

b. Department chairpersons directed and assigned departmental support personnel.

c. Although other faculty members interviewed applicants and there was faculty input in the hiring process, it was the department chairpersons' recommendation which was forwarded to the dean.

The Michigan Employment Relations Commission (MERC) has stated that supervisory status should be judged on the facts to determine whether the employee's duties align him with management. Western Michigan University, 1975 MERC 114.

Thus, in Gogebic Community College, 1975 MERC 545, the MERC found that division chairpersons should be included in the faculty unit as they were not supervisors. The MERC found that although division chairpersons were appointed by the President of the college after nomination by the faculty in each department and performed the usual duties of such positions, such as interviewing prospective faculty, assisting deans, and evaluating other instructors, the division chairpersons should be included in the faculty unit since they taught a full load and were essentially a common link between the faculty and the administration, and the real authority over other faculty members was retained by the dean.

But, in Northern Michigan University, 1975 MERC 656, MERC found that the department chairpersons should be excluded as supervisors despite the collegial methods used in their selection and in conducting departmental business. MERC found that the difference was that in this case the authority delegated by the administration to department chairpersons gave them a considerable scope of responsibility and therefore created an alignment with management.

The Pennsylvania Labor Relations Board (PLRB) has adopted much of the NLRB's rule with regard to determining supervisory status of department chairpersons. For example, in Bucks County Community College, 1 PPER 91 (1971), the PLRB, citing several NLRB decisions, stated:

> "The Department Chairmen have the authority to make effective recommendations with regard to the hiring, firing and discipline of the members of the faculty. Although they may consult with faculty members beforehand, it is the department chairmen who actually make the recommendations and they are rarely, if ever, overruled by their supervisors. In addition, they have added compensation for their increased responsibilities and work under a reduced teaching load. On the basis of the above facts, the department chairmen appear to be supervisory employees as defined in Section 301(b). . . of the Act."

Finding the rule set forth by the NLRB in C.W. Post, 189 NLRB No. 109 (1971) to be particularly applicable to this case, the PLRB excluded the department chairpersons from the unit as supervisory.

In Luzerne County Community College, 4 PPER 30 (1974) the PLRB, applying the same reasoning, clarified the college professional unit to include department chairpersons previously found to be supervisors due to substantial changes in their duties including: (1) Department chairpersons no longer selected one employment application following faculty consultation for recommendation to the president, but instead was required to rank-order five candidates, and in the last three employment situations, the department chairpersons' recommendations were rejected; and (2) the classroom observation and written evaluation functions formerly used for promotional and disciplinary procedures were eliminated. The PLRB found that class scheduling, supply ordering and budgetary recommendation functions of department chairpersons were insufficient reasons for continued supervisory exclusion.

Unlike the NLRA, the Michigan Public Employment Relations Act and the Pennsylvania Public Employee Relations Act, New York's Taylor Law does not have special provisions relative to unit placement of supervisory personnel for purposes of collective bargaining, so the issue of supervisory status of department chairpersons has not arisen. Department chairpersons have been included in faculty units in New York by stipulation of the parties. See, e.g., State of New York (State University of New York), 2 PERB 4010 (1969). In order to exclude department chairpersons from the faculty bargaining unit in New York, the employer must show that they are managerial or confidential employees, rather than supervisory.

The relative advantages of showing department chairpersons to have supervisory status of course depends on the particular law under which the employer is operating. If, as under the NLRA and the Michigan Public Employment Relations Act, supervisors are excluded from the definition of "employee" and therefore do not have the right to engage in collective bargaining, it is to the employer's advantage to show that as many persons as possible are supervisors. If, however, as under the Pennsylvania Public Employee Relations Act, Supervisors are merely excluded from non-supervisory units, the advantage of showing supervisory status is considerably diminished, since they may form "auxiliary" units represented by the same organization gaining in actuality what they were apparently denied in form. In California, the Educational Employment Relations Act created two categories of representation for community college administrators; managment who are excluded from the Act and supervisors who are excluded from other units and may not be represented by organizations which represent the employees they supervise.

Non-Teaching Support Staff

In every community college there are support personnel. Many of them are on the faculty salary schedule who are highly trained, have advanced degrees and who work with students but who don't teach in classrooms. The question with these people is whether to create a small separate unit or to include them in the faculty unit. From management's point of view it is usually better to place them in the faculty unit to cut down on whipsawing. However, the labor relations boards have taken various positions.

In Rensselaer Polytechnic Institute, 218 NLRB No. 220, 89 LRRM 1863 (1975), the NLRB found that research associates have a close community of interest with the teaching faculty as professional employees and therefore included them in the faculty unit. Similarly, members of the Physical Education Department were found to have a close community of interest with the faculty as professional employees since they taught and counseled students, attended and spoke at conferences of professionals in their field, were eligible for sabbatical leaves and shared many of the fringe benefits enjoyed by faculty members, thus the NLRB included them in the faculty unit. However, the Associate and Assistant Deans were found to be essentially administrative personnel with no substantial community of interest with the faculty and therefore the NLRB excluded them from the faculty unit.

In Fordham University, 214 NLRB No. 137, 87 LRRM 1643 (1974), the NLRB found that the librarians were professional employees and should be included in the faculty unit since their ultimate function was aiding and furthering the eductional and scholarly goals of the university, which was similar to the goals of the faculty, although pursued differently.

In Long Island University, 189 NLRB No. 109, 77 LRRM 1001 (1971), the NLRB found that Guidance Counselors were professional employees since they were required to have advanced knowledge and performed intellectual and varied functions as contemplated by the NLRA's definition of professional employee and should be included in the faculty unit. The Admissions Counselors and Academic Counselors were found not to be professional employees since they were not required to have advanced knowledge and were not performing intellectual and varied tasks. The knowledge these counselors were required to possess and the duties they performed, required only a knowledge of the school's curriculum and services, hence the NLRB excluded them from the faculty unit.

The Michigan Employment Relations Commission has included non-teaching staff (academic advisors, admissions officers, counseling and testing officers, financial aid officers, library employees, registrars) in the faculty unit because of the functionally integrated nature of the work and efforts of the teaching faculty and non-teaching staff, having education of students as their common goal. See, e.g., Wayne State University, 1972 MERC 140; Eastern Michigan University, 1972 MERC 118. However, MERC excluded a data processing officer from the faculty unit in Gogebic Community College, 1975 MERC 545, finding that, although this employee spent twenty-five percent of his time teaching, he was principally an administrative employee whose duties and responsibilities were dissimilar to those of the instructional and support personnel, and whose community of interest did not lie with the faculty bargaining unit.

The Pennsylvania Labor Relations Board, in University of Pittsburgh, 7 PPER 21 (1976), excluded non-teaching professional employees such as programmers, buyers, accountants and counselors from the faculty bargaining unit, finding that they contributed no more to the educational function than office clericals and maintenance employees, and lacked a sufficient community of interest with the faculty unit. However, in the case of Bucks County Community College, 1 PPER 91 (1971), the Pennsylvania Labor Relations Board found that librarians and counselors were professional employees involved in the education of students, included them in the faculty unit and in Lehigh County Community College, 4 PPER 78 (1974), the PLRB found that the Director of Financial Aid, Director of Placement and Transfer Services Officer should be included in the faculty unit since these employees worked with faculty members to assist students, advised students within their particular area of expertise, were classified as associate instructors and excluding them would have resulted in unit fragmentation.

In New York the New York Public Employee Relations Board included the College Registrar, Accountant, Technical Specialist, College Nurse, Director of Physical Plant and Manager of Machine Services in the faculty unit in Jefferson County (Community College), 5 PERB 4012 (1972), finding the required community of interest for such inclusion. This finding was based on the fact that these employees were subject to the same rules of the Board of Trustees as the teaching faculty, enjoyed the same fringe benefits, were eligible for tenure and were part of the faculty wage plans.

It is clear that there is a myriad of positions coming under the general heading of "Non-teaching Support Staff", as well as many bases upon which these personnel may be included or excluded from a faculty unit. Community college trustees concerned with a possible organizing campaign or a pending state labor relations law would be well advised to closely examine all of the duties and functions of their support personnel positions and redefine their structure if necessary to prevent unit fragmentation.

Part-time Faculty

Due to the large number of part-time faculty utilized at the community college level, perhaps one of the most important, as well as the most difficult, unit problems faced by the trustees of community colleges is the unit placement of the part-time faculty.

The possible unit placement of part-time faculty are, generally:

a. Exclusion of some or all part-time faculty from the collective bargaining process as non-employees.

b. Inclusion of some or all part-time faculty in a separate part-time unit.

c. Inclusion of some or all part-time faculty in the regular faculty unit.

Prior to 1973, in private sector colleges and universities the National Labor Relations Board found that regular part-time college faculty had sufficient community of interest with full-time faculty to be included in the same unit. University of New Haven, Inc., 190 NLRB No. 102, 77 LRRM 1273 (1971). However, in 1973 the NLRB issued its decision in New York University, 205 NLRB No. 16, 83 LRRM 1549 (1973), which specifically overruled those earlier cases. In New York University, and subsequent cases, the NLRB found that there were substantial differences between full-time and part-time college faculty with respect to compensation, participation in university government, eligibility for tenure and working conditions. Since that time the NLRB has consistently refused to direct elections in units composed of full-time and part-time faculty. University of San Francisco, 207 NLRB No. 15, 84 LRRM 1403 (1973); Catholic University, 205 NLRB No. 19, 83 LRRM 1548 (1973); Point Park College, 209

NLRB No. 152, 85 LRRM 1542 (1974); Yeshiva University, 221 NLRB No. 169, 91 LRRM 1017 (1975).

Some of the state labor relations boards have followed the NLRB decisions. In Pennsylvania, the Pennsylvania Labor Relations Board in Community College of Philadelphia, 7 PPER 116 (1976), found that the part-time instructors did not constitute an appropriate unit because the unit was unstable and the part-time instructors did not appear to share an identifiable community of interest, thus excluding the part-time faculty from representation.

In Board of Higher Education of the City of New York, C-0008 (PERB 1968), the New York Public Employee Relations Board held that part-time instructors should be placed in a separate unit from permanent faculty stating:

> "Despite these common interests, the major differences between the permanent staff and the nonannual lecturers in important terms and conditions of employment such as tenure, fringe benefits and the method of determining salaries, create a sharp conflict of interest which mandates separate representation. The employer has, in effect, recognized that there exists a division between these two groups by creating these differences, and it cannot be said that the history of 'negotiations' is so permanent that it establishes an inviolate practice that negates them."
>
> "Therefore, I find that the permanenet staff should be separated from the nonannual lecturers for purposes of collective negotiations."

However, in Michigan, the Michigan Public Employee Relations Commission has specifically refused to go along with the private sector cases. In Gogebic Community College, supra, the MERC held that part-time instructors were to be included in the same unit with full-time faculty.

Not all part-time faculty are eligible for bargaining rights. In almost every state some distinction has been made between part-time faculty who teach one or two classes and those faculty who teach a substantial part of a full load. In the private sector the National Labor Relations Board has held consistently that part-time employees who teach less than a twenty-five percent load are "casual" employees and therefore should not be included in the representation unit. Manhattan College, 195 NLRB No. 23 (1972); University of New Haven, Inc., 190 NLRB No. 102 (1971).

In an analogous New York case Great Neck Union Free School District, C-1162 (PERB 1975), the New York Public Employee Relations Board excluded those instructors from representation whose classes met for less than six sessions per semester.

In Michigan, the MERC has taken a different tack. In the case of Gogebic Community College the Commission held that part-time instructors who taught less than six hours for two consecutive semesters, were excluded from voting but not from representation. The Commission quoted from another case which stated:

> "All persons performing services of a kind which are included within the scope of a bargaining unit are, in effect, within that unit for purposes of collective bargaining. On the other hand, some persons performing services of a kind which are within the scope of the bargaining unit lack a sufficient interest in the outcome of the election to justify permitting them to have a voice in the election."

In analyzing the role and function of the various employees discussed in this article for purposes of preparing for union unit determinations it is important that community college trustees carefully weigh the relative advantages and disadvantages of the various possible unit determinations. Clearly, it is to the advantage of the college employer to exclude as many persons as possible from union representation as having supervisory, managerial, confidential or casual status. By totally excluding a group of employees the employer is left free to set the wages, hours and terms and conditions of those unrepresented employees unilaterally. On the other hand, if a group of employees is excluded from a bargaining unit, the community college employer leaves himself open to the possibility of those employees forming a separate bargaining unit

Conclusion

It is to the employer's advantage to take an active role in determining the representation unit. Letting the unit happen or agreeing to the employee organizations' definition of the unit may result in serious labor relations problems which the employer will have to live with. The size of the unit and the classifications included in it have a direct impact on the day-to-day labor relations program. A good unit can result in quick harmonious negotiations. A bad unit can be the direct cause of poor negotiations, militancy and strikes.

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